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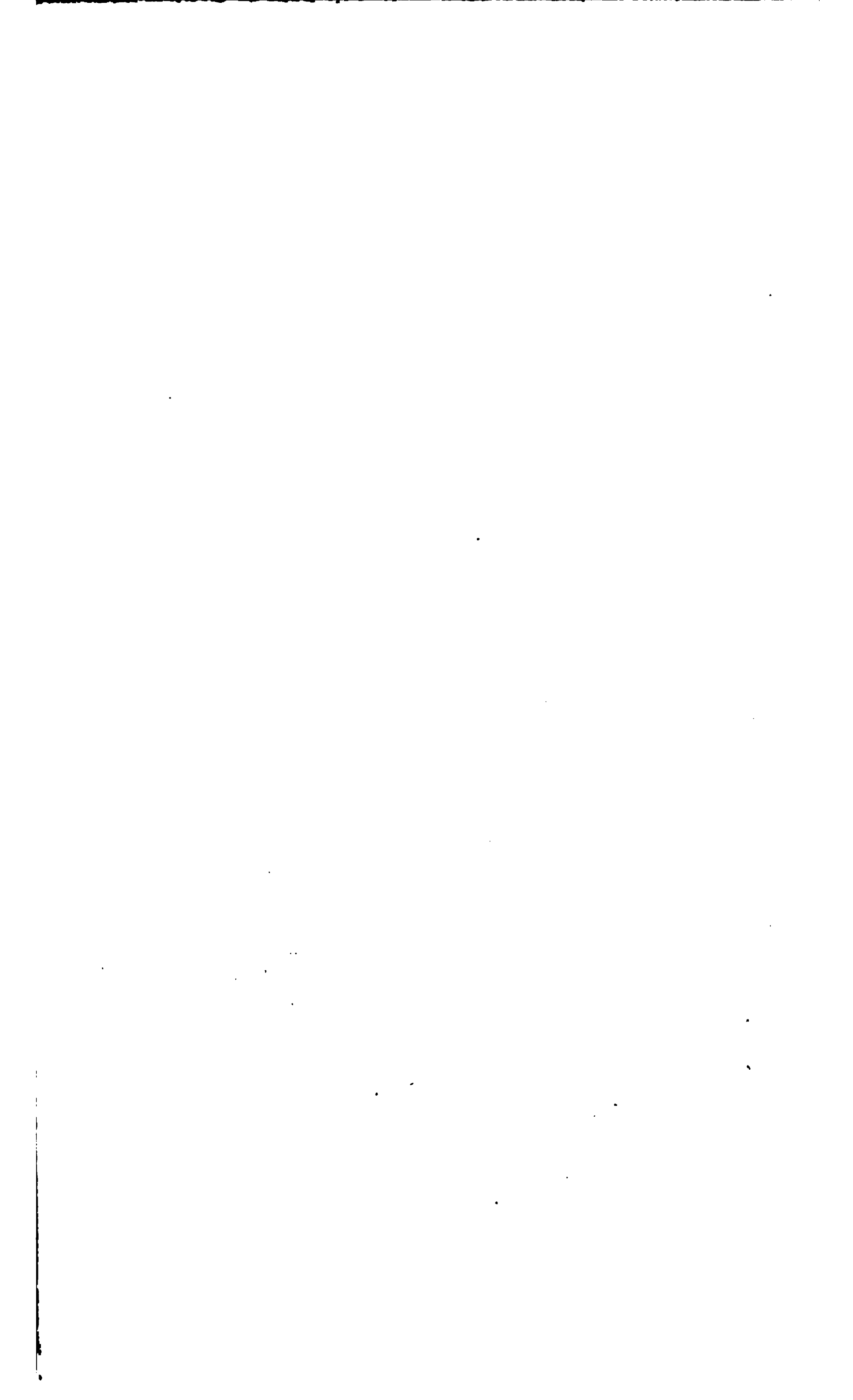
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A
MANUAL
ON THE
WINDING UP OF COMPANIES
BY THE
COURT OF CHANCERY,
UNDER
THE ACT AND RULES OF 1862,
WITH THE
INDUSTRIAL AND PROVIDENT SOCIETIES' ACT, 1862,
AND
*Forms of Proceedings, Costs, Statutes, and
Copious Table of Cases.*

ALSO CONTAINING AN
INTRODUCTORY CHAPTER ON THE FORMATION, INCORPORATION
AND REGISTRATION OF JOINT STOCK COMPANIES.

BY
JOSEPH S. TAYLOR
SOLICITOR.



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1865.

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PREFACE.

The absence of any work upon the practice in winding up Companies by the Court of Chancery led the author, for his own personal instruction, to make a collection of the cases on the subject. Thence he was induced to put together the text of this work. He has in no way designed to write a Treatise, but his sole object has been to produce a practical work or manual, and whilst conscious that, in dealing with a subject somewhat complicated in its nature and details, he may not have escaped some errors, he trusts that the object in view has been attained.

Many Forms have been added to those set out in the third Schedule to the Order of 11th November, 1862, and the Precedents of Costs have been settled with bills which have been taxed. The

Table of Cases has been prepared in a form which it is considered will be found of value for reference by the Practitioner. It contains many cases not cited in the text of the work.

The Chapter on the formation of Companies has been added with the view of giving completeness to the work.

JOSEPH S. TAYLOR.

OLD JEWRY CHAMBERS.

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- White's Case, 19 L J R, N S, Ch. 497; 3 De Gex & S 157.
- *husband and wife both liable.*
- Hamers' Devises Case, See ante, Devises.
- *illegal conduct by director, shareholder liable.*
- Longworth's Executors' Case, 7 W R (v c w) 483; 33 L T 283.
- *illegal issue of shares, holder liable.*
- Barclay's Case, 27 L J, Ch. 660.
- *infant, father, of liable.*
- Litchfield's Case, 19 L J R, N S, Ch. 124; 3 De Gex & S 141.
- Reevely's Case, 18 L J R, N S, Ch. 110; 1 De Gex & S 550; 1 Hall & Tw 118.
- *father of, not liable.*
- Maxwell's Case (M R), 24 Beav. 321.
- *interpolation in deed, how far affects liability.*
- Richmond and Painter's Case, 4 K & J 305; 32 L T 174.
- Sheffield's Case, 7 W R 214; 32 L T 310.

Contributory—continued.

- Felgate's Case (not liable), 13 W R (M R) 4, overruled 13 W R. (L J) 305.
 Healey's Case, same references.
 — *insolvent. See Bankrupt. Not liable.*
 Parbury's Case, 9 W R 470, (L C and L J J, overruling V C K), 8 W R 723; 3 De Gex F & J 80. Indian Bankrupt Act.
 — *lapse of time—fraud applies to dealing with shares.*
 Hunt's Case, 11 W R 655; 8 L T, N S 377.
 — *married woman, not liable.*
 Rhodes' Case, 7 W R 510.
 — *liable.*
 Luard's Case, 8 W R, (L J) 297; 2 L T, N S 3; 1 De Gex, F & J 533.
 — *misrepresentation. (See False Representation.)*
 — *shareholder not liable.*
 Ayre's Case, 27 L J, Ch. 579; 25 Beav. 513; 4 Jur. N S 596; Bell's Case, 26 L J, Ch. 137; 22 Beav. 35; Blake's Case, 13 W R 486; 34 L J Ch 278; Brockwell's Case, 5 W R 858; 26 L J, Ch. 855; 4 Drew 205; but see Mixer's Case.
 — *shareholders liable.*
 Conybeare v. New Brunswick, &c., Railway Company, Limited, 8 W R (V C S) 231; 1 L T, N S (L J) 360; 8 W R 508; 9 H. L. Ca. 711; Duranty's Case, 7 W R (M R) 70; 32 L T 114; Gibson, Hudson, and Kemp's Cases, 6 W R (L C and L J J) 384; 2 De G & J 275; Letts and Steer's Case, 5 W R (V C K) 399; 26 L J Ch. 455; Mixer's Case, 7 W R 677; 28 L J, Ch. 879; 4 De Gex & J 575; Nicol's Case, 7 W R 217; 3 De Gex & J. 387; 33 L T 14; see also Barrett's Case, 13 W. R. 541, 826.

Contributory—continued.

- *misdescription, shareholder liable.*
 Cookney's Case, 7 W R (L J) 22; 32 L T 82.
 — *not liable.*
 Webb's Case, 8 L T, N S (L C) 478.
 — *mortgagee of shares. See Pledgee.*
 — *liable personally.*
 Price and Brown's Case, 19 L J N S, Ch. 123; 3 De Gex & S 146.
 — *official manager of Company, liability to be put on list of contributories.*
 Re the Security Mutual Life Assurance Society, Ex parte the Official Manager of the Athæneum Life Assurance Society, 6 W R (V C K) 431; 31 L T 94.
 — *order for payment of balances by contributories refused.*
 Cox's Case, 19 L J, N S 167; 3 De Gex & S 180.
 — *paid up shares, no power to issue, holder liable.*
 Daniel's Case, 5 W R (L J) 677; 29 L T (M R) 104, (L J) 254; 1 De Gex & J. 372.
 — *holder not liable.*
 The Cheshire Patent Salt Co., Limited, 1 N R (V C K) 533; Currie's Case, 11 W R (L J) 46; 32 L J, Ch. 57; 7 L T, N S 486.
 — *persons acting as shareholders liable.*
 Davidson's Case, 18 L J, N S Ch. 254; 3 De Gex & S 21; Hitchcock's Case, 3 De Gex & S. 92.
 — *pledgee of shares, liable personally.*
 Price and Brown's Case, 19 L J, N S Ch. 123; 3 De Gex & S 146.
 — *not liable.*
 De Castro's Case, 2 Jur. N S 1203; 28 L T 141.

Contributory—continued.

— *party indemnifying holder, not liable. See also Registered Holder.*

Ex parte Fenwick, 18 L J, N S Ch. 112; 1 De Gex & S 557.

— *Promoters and provisional committeemen, not liable.*

Besley's Case, 20 L J, Ch. 385; 3 De Gex & S 224; 3 Mac. & G 287; Hall's Case, 19 L J, N S, Ch. 386; 3 De Gex & S 214; Hight's Case, 22 L J, N S, Ch. 902; 1 W R 364; 1 Drew 484; Robert's Case, 19 L J, N S, Ch. 368; 2 Mac. & G. 192; 3 De Gex & S 205; 2 Hall & Tw. 391; Tanner's Case, 21 L J, N S, Ch. 212; 5 De Gex & S 182; Clark's Case, 20 L J, Ch. 14; Cottle's Case, 19 L J, N S, Ch. 366; 2 Mac. & G. 185; 2 Hall & T 382; 2 H L Ca. 647 (Norris v. Cottle); Carrick's Case, 20 L J, N S 670; 1 Sim. N S 505.

— *promoters and provisional committeemen liable.*

Besley's Case, see *supra*, 19 L J, N S, Ch. 362; 2 Mac. & G 176; 3 De Gex & S 224; 2 Hall & Tw. 375.

Brittain's Case, 20 L J, N S, Ch. 479; 1 Sim., N S 281.

Hole's Case, 3 De Gex & S 241.

Hutton v. Upfl, 2 H L Ca. 674.

Markwell's Case, 5 De Gex & S 528.

Morrison's Case, 20 L J, Ch. 296.

Studley's Case, 19 L J, Ch. 417; (as to all the above cases, see Bright v. Hutton, 3 H L Ca. 341, which is considered to overrule them.)

Norbury's Case, 5 De Gex & S 423.

Pearson's Executors' Case, 3 De Gex M & G 241.

Spottiswoode & Ainswick's Case, 6 De Gex M & G 345.

Contributory—continued.

— *register, name on, but no description, no liability.*

Webb's Case, (L c), 8 L T, N S 478.

— *registered holder liable, though known to directors that he was not to be.*

Barrett's Case, Re Moseley & Co., 12 W R (L c) 925; 10 L T, N S 594.

Cox's Case, 12 W R 92, Nov. 2, 1863.

— *relinquishment of shares, shareholder not liable.*

Edwards's Case, 1 L T, N S 399; cost book mine.

Fenn's Case, 22 L J, N S, Ch. 692; 4 De Gex M & G 285; 2 W R 282

Re Welch Potosi Mining Co., Birch's Case, 27 L J, Bkr. 4; 2 De Gex & J 10; 6 W R 141.

Lofthouse's Case, 2 De Gex & J 69; 6 W R. 140.

Re Wrysgare Slate and Slab Quarry Co., Birch's Case, 7 W R 335.

— *shares passing by delivery, purchaser liable.*

Grisewood and Smith's Case, 7 W R (L J) 681; 4 De Gex & J, 544; 33 L T 322.

See also Aston's Case, 7 W R 509; 33 L T 177.

— *subscribers liable.*

Jones's Case, 6 W R (v c k) 479; 4 Jur., N S 448; nominal shares.

Davidson's Case (v c w), 6 W R 376; (L J) 453; 31 L T 127; 27 L J, Ch. 488; 3 De Gex & S 21; see Leischman v. Cochrane, 9 L T, N S 104.

Jennings' Case (v c k), 6 W R 765.

— *past shareholder. See transferor. Not liable. Shares surrendered.*

Re Bodmin United Mines' Co., 5 W R (M R) 300; 3 Jur., N S 350; 29 L T 20.

— *shares cancelled, liable.*

Stanhope's Case, 3 De Gex & S 198; 19 L J, N S, Ch. 389.

*Contributory—continued.**— tenant for life liable,*

Bigge's Case, 7 W R 30 (v c k);
37 L T 116; 28 L J, Ch. 50.

— transferee liable.

Barnard's Case, 21 L J, Ch. 468;
5 De Gex & S 283.

Cape's Executors, 22 L J, Ch.,
N S 601; 2 De Gex M & G
562, for all debts due before and
after transfer.

Dodgson's Case, 3 De Gex & S
85; fraud of directors.

Gordon's Case, 3 De Gex & S 249.

Macquire's Case, 18 L J, N S, Ch.
256; 3 De Gex & S 31.

Mayhew's Case, 24 L J, N S, Ch.
353; 5 De Gex M & G 837;
2 W R 486; see also 3 W R 95.

Sanderson's Case, 3 De Gex & S
66; no transfer.

Straffon's Executors' Case, 22 L J,
Ch. 194; 1 De Gex M & G
576; 4 De Gex & S 256.

Walter's first Case, 3 De Gex & S
149; 19 L J, N S, Ch. 501.

Walter's second Case, 3 De Gex &
S 244.

*— transferror, valid transfer not
liable.*

Bagge's Case, 20 L J Rep. 229;
13 Beav. 162.

Bowen's Case, 4 W R (v c w) 800;
not liable where transferee put
on list; cost book mine.

Croxton's Case, 1 De Gex M & G
600.

Horn's Case, 12 W R 904.

Lane's Case, 12 W R 60.

Orpen's Case, 11 W R (v c k) 741;
8 L T, N S 596; 9 Jur. N S
615; though call due, not paid
before transfer.

Reeve's Case, 10 W R (v c w)
817.

Sutton's Case, 3 De Gex & S 262.

*— transferror, transfer not sanc-
tioned, not liable.*

Brotherhood's Case (M R), 10 W

Contributory—continued.

R 705; 31 L J 861; though con-
tract impeached.

Hollwey's Case, 1 De Gex & S
777.

Ex parte Jessop, 6 W R (L J) 716;
2 De Gex & J 638.

*— transferror, within three years,
liable.*

Hawthorn's Case, 18 L J, N S, Ch.,
179; 1 De Gex & S 571; 1 M
& G 49; 1 Hall & Tw. 225.

*— not liable, where no debts due
before transfer.*

Holmes' Case, 22 L J, N S, Ch.
226; 2 De Gex M & G 113, and
4 De Gex & S 312.

— transferror, to an infant, liable.

Reid's Case, 5 W R (M R) 854.

*— transferror liable (invalid or
incomplete transfer).*

Bennett's Case, 24 L J, N S, Ch.
130; 5 De Gex M & G 284;
18 Beav. 339; 2 W R 448.

De Castro's Case (v c w), 2 Jur.
N S 1203; 28 L T 141.

Brown's Case, 19 Bea. 97; 2 W
R 534.

Henderson's Case, 19 Bea. 107;
3 W R 5.

Chartres' Case, 1 De Gex & S 581.

Hennessey's Case, 19 L J, N S,
Ch. 353; 2 Mac. & G. 201; 3
De Gex & S 191; 2 Hall & Tw.
395.

Walton and Hue's Case, 5 W R
(v c k) 637.

Humby's Case, 7 W R 335; 33
L T 7.

Richmond's Executors' Case, 3 De
Gex & S 96.

Morgan's Case, 18 L J, N S, Ch.
265; 1 De Gex & S 750; 1 Mac.
& G 225; 1 Hall & Tw. 320.

*— liable for debts due before
transfer.*

Hawthorn's Case, 1 De Gex & S
571.

*— transferror, on transfer to
avoid liability, not liable.*

Contributory--continued.

De Pass's Case, 7 W R (L J) 682;
4 De Gex & J 544, but see
post.
— *liable.*

Alexander's Case (v c w), 9 W R
410; 3 L T, N S 883.

Castello's Case, 2 De Gex F & J
302; 9 W R (L J) 6; 30 L J,
Ch. 113.

Chinnock's Case, 8 W R 255;
1 L T, N S 435.

Hatton's Case (v c w), 10 W R
313; 31 L J, Ch. 340; 8 Jur.,
N S 380; 6 L T, N S 123.

Hyam's Case 8 W R 52; 29 L J,
Ch. 243; 1 De Gex F & J 75.

— *transferror, on transfer to
nominee of directors to stop in-
quiry, liable.*

Eyre's Case, 10 W R 678; 6 L T,
N S 599.

— *transferror, on transfer to Com-
pany, liable.*

Benham's Case, 13 W R 483.

— *not liable.*

Cockburn's Case, 20 L J, N S, Ch.
137; 4 De Gex & S 177, di-
rector.

Grady's Case, 8 L T, N S 98; 32
L J, Ch. 326; 9 Jur., N S 631;
1 De Gex J & S 488.

Holwell's Case, 1 De Gex & S
777.

Lane's Case, 11 W R (v c κ) 1044;
1 De Gex J & S 504.

— *trustees, not liable at all.*

Hall's Case, 19 L J, N S, Ch. 69;
3 De Gex & S 80; 1 Hall &
Tw. 580; see Barrett's Case,
Moseley Coal Co., 13 W R 559.

Pim's Case, 18 L J, N S, Ch. 258;
3 De Gex & S 11.

— *trustees, personally liable. See
also Cestui que trust.*

Holt's Case, 20 L T, N S, Ch.
413; 1 Sim., N S 389.

Fenwick's Case, 18 L J R, Ch.
112; 1 De Gex & S 557.

Contributory—continued.

Hoare's Case, 10 W R 381; 2 J &
H 229; 6 L T, N S 240.

— *ultra vires, shares issued, holder
liable.*

Hitchcock's Case, 3 De Gex & S
92.

Worth's Case, 7 W R (v c κ) 281;
28 L J, N S, Ch. 589.

— *past holder of, liable.*

Daniel's Case, 26 L J, Ch. 563.

— *withdrawal, past holder of
shares withdrawn, not liable.*

Hawthorn's Case, 10 W R (v c w)
572; 6 L T, N S 574.

— *withdrawal before allotment,
no liability.*

Gledhill's Case, 9 W R 791; 7
Jur., N S 981.

Miles's Case, 13 W R 219; 34
L J, Ch. 123.

— *adjusting rights inter se.*

Lowndes and Dayrell's Case, 4 W
R (v c κ) 110; 25 L J 165;
1 Jur. 1129.

— *notice of settling list of contri-
butories.*

— *master cannot settle in any
other character than that stated
in notice.*

Glaholme's Case, 18 L J, N S, Ch.
147; 1 De Gex & S 583; 1 Hall
& Tw. 121.

Hutchinson's Case, 1 De Gex & S
563.

— *list not settled till signed by
Judge.*

Libri's Case, 5 W R (v c w) 773.

Costs. See Appeal.

— *of two or more petitions.*

Re General Indemnity Assurance
Co., 5 W R (v c w), 465; 28
L T, 354.

— *of adverse petitions.*

Re South Essex Gas Light and
Coke Co., 6 W R, (v c κ), 234.

Re British, &c., Gas Generating
Co., Limited, 13 W R, 649.

*Costs—continued.**— of unsuccessful opposition to petition.*

Re Bosworthon Mines, 28 L T, 352.

— of alleged contributory succeeding, Company pays.

Re Wrysgare Slate and Slab Quarry Co., 7 W R, 335.

— of alleged contributory failing, contributory pays.

Re Birkbeck Life Assurance Co., Limited, 13 W R, 380.

— of innocent parties, partly succeeding and partly failing neither to receive or pay.

Wood & Brown's Case, 10 W R (v c k), 662.

— of official liquidator appearing on petition to wind up voluntarily, not allowed.

Re General International Agency, &c., Co., 13 W R, 363.

— of voluntary liquidator appearing on petition to wind up under superintendence of Court, allowed.

Re East Dylyffe Lead and Copper Mining Company, Limited (v c s).

Re Snowbrook Silver Lead Mining Co., Limited (v c s). Both unreported. See 13 W R, 364.

— security for, where petitioner out of jurisdiction.

Re Royal Bank of Australia, Ex parte Latta, 19 L J, N S, Ch., 163; 3 De Gex & S, 186.

Creditors' representative, when to appear, costs.

Re Era Assurance Society, 11 W R, 320; 8 L T, N S, 126; 32 L J, Ch., 206; 9 Jur. N S, 163; 1 N R, 343.

Re Mexican and South American Mining Co., 6 W R (L J), 560; 4 Jur. N S, 595; 31 L T, 160.

Re National Insurance and Investment Association, Ex parte Cot-

Creditors' representative—continued.

terell (L J), 11 W R 2; 32 L J, Ch., 66; 1 N R, 5; same case, 11 W R, 11; 8 Jur. N S, 1083; 7 L T, N S, 341.

— appearance by, in addition to, official manager, unnecessary.

Re Phoenix Life Assurance Association, Hatton's Case (v c w), 10 W R, 313; 31 L J, Ch., 340; 6 L T, N S, 123.

— costs out of the estate.

Re British Provident Life Assurance Society, Ex parte Orpen, 11 W R, 741; 9 Jur., N S, 615; 8 L T, N S, 596.

Re Electric Telegraph Co. of Ireland, Budd's Case, 10 W R (L J), 51; 5 L T, N S, 249, 332; 30 Beav. 143.

— right to vote in appointment of.

Re British Provident Life and Fire Insurance Society (v c k), 10 W R, 508; 8 Jur., N S, 453.

*Creditor's claims.**— advertisement before registration, claim for, not allowed.*

Lloyd's Case, 1 Sim., N S, 248.

— amalgamation, proof in respect of liability on, not allowed.

Williams' Case, 9 W R (v c w), 67; 30 L J, Ch., 137; 3 L T, N S, 314.

— annuity. (See policies.) Proof for value of, allowed.

Hunt's Case, 11 W R, 225; 1 Hem. & Mill. 79; 7 L T, N S, 669.

— amalgamation, proof for debts.

Tate, Rummey and Watson's Cases, 10 L T, N S, 326.

— assignee of contract, proof against, not allowed.

Acraman's Case, 7 L T, N S, 85.

— bills of exchange, claim on, allowed.

Meredith's Case.

Conyer's Case, 11 W R, 416 (v c w); 8 L T, N S, 146; 32 L J, N S, Ch., 300.

Creditors' claims—continued.

— *promissory note or debenture, allowed.*

Walker's Case, 2 W R, 383; 25 L T, 74.

— *claim, debt entered as a claim until established at law.*

Re Counties Union Assurance Co., 5 W R (v c w), 389.

Re Norwich Yarn Co., Ex parte East of England Bank, 5 De Gex M & G, 505; 21 L J R, N S, 822

— *contract for purchase of business without authority, claim on, disallowed.*

Ernest v. Nicholls, Re Sea Fire Assurance Co., Port of London Shipowners' &c. Society, 6 H L Ca. 401; 3 Jur., N S, 919; 30 L T, 45.

— *contract where error in law, not allowed.*

Re Saxon Life Assurance Society, Ex parte Era Assurance Co., 11 W R (L J), 59; 7 L T, N S, 404; 32 L J, Ch., 206.

— *creditors against some members only of a Company not allowed to prove against Company, although debt contracted for purpose of Company.*

Re Great Western Extension, &c., Railway, Ex parte Wryghte, 2 De G M & G, 636.

— *costs, claim for, allowed.*

Re Independent Assurance Co., Ex parte Terrell, 2 Sim. N S, 126; 23 L J, N S, Ch., 345; 4 H L Ca., 1091.

Re Warwick & Worcester Railway Co., 6 W R, 433; 31 L T, 145.

— *the like, not allowed, when incurred ultra vires.*

Howard and Dolman's Case, 11 W R, 984; 2 N R, 548.

Cropper's Case, 21 L J, N S,

Creditors' claims—continued.

Ch., 593; 1 De Gex M & G, 147.

— *costs of action by creditors, claim for, allowed.*

Re Welch Potosi Lead and Copper Mining Co., Ex parte Tobin, 7 W R (v c w), 4; 28 L J, Ch., 44; 32 L T, 100. (See also Cases, title "Action.")

— *debentures, invalid, proof by assignee, allowed.*

Hewlett's Case, 10 W R (v c w), 226; 2 J & H, 306; 8 Jur., N S, 357.

— *claim by trustee on, allowed.*

Boyd's Case, 3 Jur., N S, 554; 1 De Gex & J, 223.

— *directors, claim by, for fees, allowed.*

Johnson's Case, 27 L J, Ch., 803.

— *claim on contract with, disallowed.*

Stear's Case, 7 W R, 665 (v c w)

— *money lent by, claim for, allowed.*

Re German Mining Co., 24 L J, N S, Ch., 41.

Baker's Claim, 1 L T, N S, 526; 8 W R (v c w), 268; 29 L J, Ch., 409.

Bignold's Case, 4 W R, 619.

Murray's Executors' Case, 3 W R, 35; 24 L J, N S, Ch. 25; 5 De Gex M & G, 741.

— *salary, claim for, disallowed.*

Re Cardiff and Preserved Coal, &c., Co., 7 L T, N S, 656; 32 L J, Ch., 154; 1 N R, 148.

— *money lent by, claim for, disallowed, as within 29th section of 7 & 8 Vict. c. 110.*

Teversham v. Cameron Coalbrook Co., 18 L J, Ch., 177; 3 De Gex & S. 296.

— *calls, claim for calls paid on shares deposited, not allowed.*

Brigg's Case, 8 W R. 110.

Creditors' claims—continued.

— *evidence in support of claims may be produced before Master.*

Prichard's Case, 23 L J R, N S, Ch., 958; 5 De Gex M & G, 495.

— *engineer, claim by, allowed.*

Pritchard's Case, 4 De Gex & S, 328; 5 De Gex M & G, 484.

— *interest on purchase money of business, claim for, allowed.*

Re State Fire Co., 13 W R, 152 (v c w); 34 L J, Ch., 58.

— *money lent to Company through directors or trustees, claim for, allowed.*

Croxton's Case, 5 De Gex & S, 432.

Ernest's Case, 32 L T, 265, 365.

Hoare's Case, 9 W R (M R), 878.

Troup's Case; Id. 878.

— *not allowed.*

Wright's Case, 21 L J R, N S, Ch., 807; 2 De Gex M & G, 636.

— *marine policy effected with a life assurance society, claim on, not allowed, but insurers entitled to return of premiums.*

Burgess and Stock's Case, 10 W R, (v c w), 816.

— *policies, proof on, allowed.*

Re Sea Fire and Life Assurance Co., Ex parte Port of London Shipowners' Loan, &c., Co. 2 W R, 546; 24 L J, N S, Ch., 705; 5 De Gex M & G 465.

— *salaries, claim for, allowed.*

Green v. Nixon, 5 W R (M R), 433; 29 L T 207.

Cope's Case, 20 L J, N S, Ch., 28; 1 Sim. N S 54.

— *security held for, creditor cannot prove.*

Winthorpe's Case, 1 W R 33.

— *shareholder, proof by, allowed, set off.*

Wood and Brown's Claim, 10 W R (v c w), 662.

Creditors' claims—continued.

— *proof, allowed, for value of shares.*

Barnard v. Bagshaw, 1 Hem. & Mill. 69.

— *Statute of Limitation, applies.*

Forrest's Case, 8 W R, 269; 29 L J, Ch., 295; 1 L T, N S 477.

Re Warwick and Worcester Railway Co., 6 W R, 433; 31 L T 145.

— *when it begins to run.*

Does not apply.

Wryghte's Case, 22 L J, N S, Ch., 183; 5 De Gex & S 244.

Re Gloucester, Aberystwith, &c., Railway, Ex parte The Official Manager, 8 W R, 175; 29 L J, Ch., 383; 1 L T, N S, 320.

— *trust monies, right to follow.*

Ernest v Croysdill, 8 W R (L J) 736; 2 L T, N S 616.

Demand. Under sect. 80 of 1862 Act, service of where no registered office.

The British, &c., Gas Apparatus Company, 13 W R 649.

— *time it must be served.*

Re Catholic Publishing Company, 12 W R 538.

Distribution of assets and dividends.

— *right of assurance creditors to participate with the general creditors.*

Re English and Irish Church and University Assurance Society, 11 W R 681, 1 Hem. & Mill 85, 2 N R 107 (v c w).

Re State Fire Insurance Company, 11 W R 746, 8 L T, N S 497, 2 N R 230, 11 W R (L J) 1011, 2 N R 565.

Examination of witnesses.

— *chief clerk, examination by.*

Re National Assurance Company, 1 L T, N S 131.

— *committal of witness.*

Stone's case, 3 De Gex & S 120.

— *contributory, examination of alleged.*

Examination of witnesses—continued.

Esgair Mwyne Mining Company,
8 W R (v c w) 660.

— *creditor, cross examination of.*

Cast v. Poyser, 3 S & G 369.

— *expenses of witnesses.*

Mercer's case, 23 L J Ch. 246, 5
De Gex M & G 26, 2 Sim. & G
87, 2 W R 251.

— *judge, examination before.*

Right of witness to require.

London and County Assurance
Company, 5 W R 794.

Bunn's case, 24 Beav. 127, 26
L J Ch. 614, 3 Jur. 1013.

— *sufficiency of objection to answer,
court to judge.*

Aston's case, 7 W R 509, 33 L T
177, 4 De Gex & S 320.

— *refusal to be sworn.*

North Wheal Exmouth Mining
Company, 11 W R 58, 8 Jur. N S
1168, 7 L T, N S 306.

*Forma pauperis, leave given to sue
Company in.*

Fry's case, 9 W R 51, 1 D & S
318, 3 L T, N S 462.

*Garnishee order, applies to debts due
from Company.*

Pritchard's claim, Ex parte Smith
and Ex parte Marshall Turner,
30 L J, Ch. 92, 6 Jur. N S 1172,
2 De Gex F & J 354.

*Jurisdiction. See also Petition and
Order to wind up.*

— *What Companies within Act.*

— *Building Society, within 1848
Act.*

Re St. George's Benefit Building
Society, 5 W R (v c κ) 771, 3
Jur. N S 683, 29 L T 310.

— *within 1862 Act.*

Re Midland Counties Benefit
Building Society, 13 W R 399,
(L J), 12 W R (M R), 661.

— *Club, not within.*

Re St. James's Club, 20 L J, N S,
Ch. 630, 2 De Gex M & G 383.

— *Foreign Company, within.*

Jurisdiction—continued.

Re Dendre Valley Railway and
Canal Company, 19 L J, N S,
Ch. 474.

Re Madrid and Valencia Railway
Company, 19 L J, Ch. N S 260,
1 Hall & Tw. 597, 2 M & G
169, 3 De Gex & S 127.

Parbury v. Chadwick, 19 L J, N S,
Ch. 562, 12 Beav. 614. Suit
stayed.

— *Friendly Societies, within, but
see below.*

Re Alferton District Friendly
Society, 11 W R 301, 7 L T,
N S 817.

— *not within.*

Re Rotherhithe Co-operative and
Industrial Society, 7 L T, N S
305. Must be registered under
25 & 26 Vict. c. 87, and wound
up in County Court.

Re Chatham Co-operative In-
dustrial Society, 12 W R 1053,
4 N R 481.

— *Incorporated Company, not
within.*

Re Herne Bay Pier Company,
18 L J, N S, Ch. 71, 1 De Gex
& S 588.

Re Direct London and Ports-
mouth, &c., Railway Company, 19
L J, N S, Ch. 163, 12 Beav. 269

— *Insurance Company, within.*

Re Mitre General Life Assurance
Association, 29 Beav. 1 (M R).

Re Universal Tontine Insurance
Company, 3 De Gex & S 112.

— *Insurance Company, not regis-
tered under 1862 Act, cannot
petition.*

Re Waterloo Life, &c., Company,
11 W R (M R) 134, 32 L J, Ch.
370, 7 L T, N S 459.

— *Loan Society, within.*

Re Sherwood Loan Society, 20
L J, Ch. N S 177, 1 Sim. N S 165.

— *Mining Company, within 1848
Act.*

Jurisdiction—continued.

- Re Trefoil & Messer Mining Company, (v c w) 10 W R 338, 6 L T, N S 154.
- Re Wheal Ann Mining Company, 10 W R (M R) 330, 6 L T, N S 38.
- *not within Act of 1862.*
- Re East Botallack Mining Company, Limited, 13 W R 197, 34 L J, Ch. 81.
- *Partnership composition deed not within.*
- Re Stanton Iron Company, 4 W R (M R) 159, 25 L J, Ch. 142, 2 Jur. N S 130, 26 L T 252.
- *Provisionally registered Company, within.*
- Bright v. Hutton, 3 H L Ca. 341.
- London and Manchester Direct Independent Railway Company, 18 L J, N S, Ch. 242, 1 M & G 176, 1 H & Tw. 238.
- *how to dispute by petition or motion to discharge order.*
- Sharpus' case, 3 De Gex & S 49.
- *insolvency, proof of.*
- Re National and Provincial Live Stock Insurance Company, 6 W R (L J) 822, 31 L T 277.
- Re Rhydydefd Colliery Company, 3 De Gex & J 80.
- Spackman's case, 18 L J, N S, Ch. 261, 1 De Gex & S 599, 1 Mac. & G 170, 1 H & Tw. 229.
- *Where resolution to wind up voluntary had passed before Act of 1862.*
- Re Fire Annihilator Company, 11 W R 654.
- *discretionary power of Court, order refused.*
- Re Anglo Australian and Universal Life Assurance Association, 8 W R (v c k) 170.
- Re British Alkali Company, 5 De Gex & S 458, 22 L J, N S, Ch. 241.
- Re Chester and Manchester Direct Railway, 1 Sim. N S 605.

Jurisdiction—continued.

- Re London Conveyance Company, Ex parte Wise, 1 Drew 465.
- Re Narborough and Watlington Railway Company, 20 L J, N S, Ch. 275, 1 Sim. N S 140.
- Re Natal Company (v c w), 1 H & M 639.
- Re Union Bank of Calcutta, 19 L J, N S, Ch. 388, 3 De Gex & S 253.
- *order made.*
- Re General Rolling Stock Company, Limited, 13 W R 423. See circumstances under which petition may be presented.
- *petition, ordered to stand over.*
- Re British Provident Life and Fire Assurance Company, 8 W R (v c k) 170.
- Re Merionethshire and Glamorganshire Banking Company, 15 Beav. 74.
- Re Newcastle Commercial Banking Company, 5 W R (v c k) 31.
- Re Parisian Factage Company, 13 W R 330, 34 L J, Ch. 140.
- Re Direct London and Manchester Railway, 1 De Gex & S 731.
- Re Rhydydefd Colliery Company, 3 De Gex & J 80.
- Re Wheal Anne Mining Company, 10 W R (M R) 330, 6 L T, N S 38.
- *reference to Master.*
- Re Boston, Newark, &c., Railway Company, 1 Sim. N S 57.
- Re Great Eastern and Western Company. The petition unopposed. 3 De Gex & S 218.
- Re North Western Trunk Company, 3 De Gex & S 266.
- *Incumbrancer on property of Company, right to sue notwithstanding winding up order.*
- Robson v. Mc Creight, 6 W R, (M R) 385, 4 Jur. N S 269, 31 L T 21.
- Incumbrance, how far valid.*

Jurisdiction—continued.

Stanley's Case, 12 W R 894, 10 L T, N S 674.

List of contributories. See Contributories.

— *notice of settling list. The like.*

Official liquidator, appointment of, who should be appointed, not a shareholder.

Re Northumberland & Durham District Bank, 2 De Gex & J 508.

— *discretion of Court not interfered with by Court of appeal.*

Re Agriculturist Cattle Co. (Limited), Ex parte Lowe, Ex parte Findlater, 9 W R (L J) 910; 4 L T, N S 630.

— *practice of sending circulars to shareholders condemned, appointment set aside.*

Re State Fire Insurance Society (v c w), 6 L T, N S 40.

— *when appointment on hearing of petition not except by consent.*

Re Commercial Discount Co., 11 W R (M R) 353; 7 L T, N S 816; 1 N R 416.

Re Rockhall Fishing Co., 11 W R 84.

— *void appointment of, official manager not entitled to costs.*

Re Plumstead &c. Water Co., 11 W R (L J) 99; 8 Jur., N S 1140; 7 L T, N S 550; 32 L J, Ch. 145; 1 N R 40.

— *per centage only upon amount actually received and divided amongst the creditors.*

Re North of England Joint Stock Banking Co., 20 L J, N S, Ch. 462.

— *action against, cannot be maintained unless Company could be sued.*

Russell v. Croysdill, 24 L J, N S Exch. 287; 11 Exch. R 123.

— *proceedings by, continuation of suit by official manager, effect of*

Official liquidator—continued.

where imperfections, official manager adopts them.

Official Manager of the Home Counties Freehold Land Society v. Ernest, Caldwell v. Ernest, 28 L J, N S, Ch. 810 (M R); 5 Jur., N S 667.

Ernest v. Weiss, 11 W R (v c k) 206; 7 L T, N S 613; 32 L J, Ch. 113.

Official Manager of Grand Trunk or Stafford &c. Railway v. Brodie, Same v. Sturgis', 22 L J, N S 514; 3 De Gex M & G 146; 9 Hare 823.

— *his position in action commenced before winding up.*

M'Kenzie v. Sligo and Shannon Railway, 19 L J, N S, C P 142.

Armstrong v. Normandy, 19 L J, N S, Exch. 343; 5 Exch. R 409.

— *costs against, refused.*

Re Cambridge and Colchester Railway Co., Ex parte Marsh, 19 L J, N S, Ch. 161; 1 M & G 302; 1 Hall & Tw. 578.

— *costs, ordered to be paid by.*

Re Direct Exeter &c. Railway, Ex parte Woolmer, 22 L J, N S 513.

— *costs against, form of order.*

The Official Manager of Consols Insurance Co. v. Wood, 12 L T, N S 170.

— *may refuse to register a transfer of shares.*

Birmingham v. Sheridan, L J, 1864, Ch. 571.

— *removal of, in a case of a voluntary winding up under supervision, Court has power to remove.*

Re Old Wheal Mining Company, 13 W R 3.

Order to wind up. See also Jurisdiction, Petition.

— *carriage of, where Petitioner dies.*

Barber's Case, 3 De Gex & S 242.

Order to wind up—continued.

— *discharging order, appeal to discharge order by three out of seven contributories dismissed.*

Woolmer's Executors' Case, 5 De Gex & S 117; 21 L J, N S, Ch. 883; 2 De Gex M & G 665.

— *appeal, by a contributory, fifteen months after date of order dismissed, except on indemnity, appeal may be by motion.*

Clarke's Case, 1 Kay & J 22; 24 L T 69.

— *petition to discharge, service of on interim manager.*

Re The Cambrian Junction Railway Co., 19 L J, N S, Ch. 122; 3 De Gex & S 139.

— *time to petition to discharge order.*

Re Chepstow, Gloucester &c. Railway Co., 2 Sim. 11.

— *motion to vary or discharge order by parties not before the Court on hearing of petition.*

The Anglo Californian Gold Mining Co., 10 W R 127; 1 Dr. & Sw. 628; 5 L T, N S 739; 31 L J, Ch. 238.

— *discharging order where material facts omitted in petition.*

Re Ipswich, Norwich and Yarmouth Railway Co., Barnett's Case, 1 De Gex & S 744.

— *post dating order to enable it to be properly advertised.*

Re Doncaster Permanent Building Society, 11 W R (v c w) 459.

— *of Scotch Court, enforcing.*

Re The Western Bank of Scotland, 8 W R (L c) 1.

— *of foreign Court, how proved.*

Leischman v. Cochrane, 9 L T, N S 104.

— *against contributory. See Contributory.*

— *substituted service of. See Chambers.*

Petition to wind up, by whom it may be presented.

Petition to wind up—continued.

— *by allottee.*

Goldsmith's Case, 19 L J, N S, Ch. 235.

— *by arranging debtor on his serving his trustees.*

Walton's Case, 3 De Gex & S 3.

— *by bankrupt on an undertaking. See Addenda.*

— *by creditor.*

Waterlow and Wright's Case, 7 W R (L c) 539; 1 De Gex F & J 257; assignee of creditor.

Cooke's Case, 3 De Gex & S 148.

Re General Rolling Stock Co. (Limited), 13 W R 423.

Re Rhydyfed Colliery Co., 3 De Gex & J 80.

— *executors, who were not proprietors.*

Re Norwich Yarn Co., 12 Beav. 366.

— *paid up shares, holder of, where the whole amount of shares been paid in cash.*

Re Constantinople &c. Hotel Co., 3 June, 1865.

— *by provisional committee.*

Hollingsworth's Case, 3 De Gex & S 7.

— *to wind up may be presented by shareholder.*

Lawton's Case, 3 W R 148; 1 Kay & Joh. 204; calls not paid.

Re Cheltenham and Gloucester Joint Stock Bank, 4 W R 624.

Sedgwick's Case (v c w), 2 Jur., N S 949.

Walker's Case and Troutbeck's Case, 18 L J, N S, Ch. 81; 1 De Gex & S 585; 1 Hall & Tw. 100.

Collingridge's Case, 19 L J, N S, Ch. 234.

Latta's Case, 19 L J Rep., N S, Ch. 387; 3 De Gex & S 186.

Hodsell's Case, 19 L J, N S, Ch. 234.

— *past or former shareholders*

*Petition to wind up—continued.**alleging themselves to be contributories.*

Re Times Fire Insurance Co., 10 W R 115; 30 L J, Ch. 478; 8 Jur. 111.

— by scrip holder.

Re Littlehampton Steam Ship Co. (Limited), 13 W R (M R), 379, (L J) 420; 34 L J, Ch. 237. The order in this case was made on "the petitioner by his counsel consenting to be treated as a contributory of the Company in respect of ten shares."

Capper's Case, 3 De Gex & S 1.

— to wind up may not be presented by creditor, where debt doubtful.

Re Hope Mutual Life Assurance Co., 1 N R 542; but see appeal, 13 W R 790.

— creditor, where debt disputed.

Re Catholic Publishing Co. (Limited), 12 W R 538; 10 L T, N S 79.

Re Dover Club and Norfolk Hotel Co., Ex parte Reynolds, 13 W R 733.

— shareholder, where Company not insolvent.

Inderwick's Case, 3 De Gex & S 231.

Wyld's Case, 18 L J, N S, Ch. 139; 2 M & G 1; 1 Hall & Tw. 125.

— unregistered Company.

Re Waterloo Life Insurance Co., 11 W R 134; 1 N R 157.

— holder of paid up shares.

Re Patent Artificial Stone Co., 13 W R 285.

Re Lancashire Brick and Tile Co., 13 W R 569; but see Re Constantinople &c. Hotels Co., 13 W R 851.

*— to wind up, under what circumstances it may be presented.**— not where Company partly abandoned.**Petition to wind up—continued.*

Fisher's Case, 3 De Gex & S 116.

— not where Company wholly abandoned.

Murrell's Case, 18 L J, N S, Ch. 260; 3 De Gex & S 4; no debts or assets.

— not where unnecessary.

Re Union Bank of Calcutta, 19 L J, N S, Ch. 388; 3 De Gex & S 253.

— may be presented where Company dissolved.

Phillips's Case, 3 De Gex & S 3.

— at what time it may be presented, where demand served under sect. 80 of the Act of 1862, clause 1.

Re Catholic Publishing Co. (Limited), 12 W R 538.

— advertisement of, must be published seven clear days.

Re London and Westminster Wine Co. (Limited), 12 W R 44.

— error in, fresh notices required.

Re —, 13 Beav. 434.

— title of.

Re Public Life Assurance Society, 7 L T, N S 302.

— service of, where no office.

Re Brighton, Lewes, &c., Railway Company, 1 De Gex & S 604. Order made on advertisement and consent of some members of Company.

Re National Credit and Exchange Company, Limited (v c k), 11 W R 161, 7 L T, N S 817.

— where office shut up.

Re London and Westminster Wine Company, 12 W R 6.

Re Unity General Assurance Company, 11 W R (v c k) 355, 8 L T, N S 160.

— service on trustees, where petitioner had entered into an arrangement with his creditors.

Re Cameron's Company, Ex parte Walter, 3 De Gex & S 2.

Petition to wind up—continued.

— *service on solicitor, not sufficient within 1848 Act.*

Re Trent Valley and Chester, &c., Railway Company, Ex parte Dale, 3 De Gex & S 11.

— *affidavit of service necessary, although member appearing.*

Re Tring, Reading, &c., Railway Company, 18 L J, N S, Ch. 242, 3 De Gex & S 10. See also Eastern Counties Junction, &c., Railway Company, Ex parte Cooke, 3 De Gex & S 148.

Re London and Dublin Approximating Company, 3 De Gex & S 209.

— *affidavit of service not necessary where secretary of Company appears.*

Re Great Western Railway Company of Bengal, 3 De Gex & S 101.

— *error in affidavit in support of petition, or the filing thereof.*

Re Kentish Royal Hotel Company, 13 W R 448.

Re Patent Screwed Boot and Shoe Company, 32 Beav. 142.

Re Western Benefit Building Society, 33 L J, Ch. 179.

Petitioner, when to attend proceedings.

Barber's Case, 18 L J, N S, Ch. 245, 1 De Gex & S 722 and 726.

Production of documents, notice of application for order when necessary.

Pell's Case, 19 L J, N S, Ch. 164, 3 De Gex & S 170.

Register, amendment of, order made.

Whittet's Case, 2 De Gex & J 577, to put person on list of contributories.

Jonassohn's Case, Re Plumstead &c., Company, not reported; though shareholder settled on list and a call made. Nov. 1863

Register, amendment of—continued.

Bloxham v. Metropolitan Cab and Carriage Company (v c w) 12 W R 736, 4 N R 51.

Ship's Case, 13 W R 450 and 599.

— *refused.*

Bird's Case, 9 L T, N S 667.

Harris' Case, 5 Hurlstone and Norman's Exch. R. 809, 29 L J, Ex 364.

Re London, Birmingham and South Staffordshire Bank, Limited, 13 W R 446.

See Birmingham v. Sheridan, L J 1864, 571.

— *time for application.*

Fox, Sir C.'s, Case, 11 W R, L C 577, 8 L T, N S 223.

— *application after order to wind up, referred to chambers.*

Buckridge's Case, 13 W R 677.

Re-registration, under Act of 1862, of Companies registered under Joint Stock Companies Acts, not necessary.

Re Torbay Bath Company, 32 Beav. 581.

Rehearing. See also Reviewing.

— *motion refused.*

Sanderson's Case, 19 L J, N S, Ch. 122; 1 Mac. & G 306; 1 Hall & Tw. 486.

— *time for.*

Besley's Case, 20 L J, Ch. 385; 3 M & G 287.

— *of appeal on fresh evidence, allowed.*

Saunders' Case, 12 W R 502; 10 L T, N S 3.

Return to shareholders or dividend.

— *scrip shares, where some not forthcoming.*

Re Madrid and Valencia Railway Co. Ex parte Quilter, 5 De Gex & S 276.

— *to directors where other shares not to be heard of.*

Re Worcester, Tenbury and Lud-

Return—continued.

low Railway Co., 3 De Gex & S 189.

Reviewing decision, time for.

Holl's Case, 3 De Gex & S 99; leave given to dispute liability.

Hutchinson's Case, 1 De Gex & S 563, where law altered.

Viscount Curzon's Case, 4 W R (v c κ) 495; 3 Drew 508.

— power to review on new facts.

Kelly's Executors' Case, 9 W R (v c κ) 329; 3 L T, N S 844.

— decision on the same evidence, not allowed.

Best's Case, 20 L J, N S, Ch. 125; 1 Sim. N S 193.

— the like, allowed.

Crossfield's Case, 22 L J, N S, Ch. 208; 2 De Gex M & G 128; 20 L J, Ch. 301; 4 De Gex & S 338.

Sale, opening biddings refused.

Re Northumberland and Durham District Bank, 9 W R (v c κ), 584; 4 L T, N S 633.

— right of contributories to be present on fixing reserved biddings.

Re Imperial Salt and Alkali Co., Slatter's Executors, 21 L J Rep., N S, Ch. 224; 1 De Gex M & G 64; 5 De Gex & S 34.

Sequestration, party abroad.

Re East of England Bank, 13 W R (v c κ) 128.

*Service of petition to wind up. See Petition.**Shorthand writer, appointment of, to take evidence, allowed.*

Re London and Birmingham &c. Railway, 6 W R (v c κ) 141.

Solicitor, appointment of, where two official managers.

Bass's Case, 18 L J, N S, Ch. 245; 1 De Gex & S 722.

Staying proceedings, order for the purpose discharged.

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Staying proceedings—continued.

Carew's Case, 2 W R 367; 23 L J, N S, Ch. 761; 5 De Gex M & G 94; 2 Sm. & G 1.

Underwood's Case, 23 L J, N S, Ch. 943; 5 De Gex M & G 677.

— right to proceed with taxation of costs notwithstanding order to stay proceedings.

Clifton's Case, 3 W R 8; 24 L J Rep., N S, Ch. 83; 5 De Gex M & G 743.

Time for disputing liability.

Holt's Case, 3 De Gex & S 99.

*Voluntary winding up.**— bill filed by creditor to have voluntary winding up continued under direction of the Court, sustained.*

Lowndes v. Garnett and Moseley Gold Mining Co., 10 W R (v c w) 264; 2 J & H 282.

— confirmation of, acquiescence.

Re Anglo Australian Gold Mining Mining Co. (v c κ), 10 W R 309; 6 L T, N S 340.

— costs of opposing shareholder, appointment of official liquidator.

Re Minima Organ Co. (Limited), 11 W R (v c κ) 530; 8 L T, N S 109.

Re Torquay Bath Co., (M R) 11 W R 653; 9 Jur. 633; 8 L T, N S 527; 2 N R 98.

Re West Silver Bank Mining Co. (Limited), 11 W R 394; 9 Jur., N S 632; 1 N R 463.

— injunction to restrain action.

Re Keynsham Co., (M R) 11 W R 926; 8 L T, N S 687; 2 N R 478.

Re Life Association of England, 34 L J, Ch. 64.

— petition by contributory, Company's Act, 1856.

Re Fire Annihilator Co., 11 W R 654; 9 Jur. N S 633; 2 N R 99.

Voluntary winding up—continued.
—— *official liquidator, void appointment of.*

Re Stearic Acid Co., 11 W. R. 980;
2 N. R. 544.

—— *appointment of.*

Re The Llanfrynach Silver Lead
Mining Co. (Limited), 9 W. R.
500; 4 L. T., N. S. 154.

Re The Anglo Californian Gold
Mining Co. v. Lewis, 9 W. R.,

Voluntary winding up—continued.

Exch. 126; 30 L. J., Exch. 50;
6 H. & N. Exch. 174.

—— *staying proceedings.*

Re Northumberland &c. Banking
Company, 6 W. R. (v. c. r.) 316;
27 L. J., Ch. 354, appeal.

6 W. R. (L. J.) 527; 27 L. J., Ch.
356; 4 Jur. N. S. 419; 31 L. T.
107.

INTRODUCTION.

By the Companies Act, 1862, the sole jurisdiction to wind up Joint Stock and other Companies, whose registered office or place of business is situated in England, has, with some few exceptions, been vested in the Court of Chancery, and the effect of the Rules of 11th November, 1862, made under that Act, is to assimilate the practice on the winding up of Companies by the Court of Chancery, so far as the case will admit, to the general practice of the Court in suits and matters instituted therein. To those therefore who are acquainted with the proceedings in Chancery, and the course pursued in the various stages of a suit, the steps to be taken in the process of winding up a Company will, with the aid of the special provisions of the Act and Rules, at once become plain, but even to them a reference to the enactments and rules relating to the particular steps may be useful. There are many, however, who are not acquainted with the proceedings in Chancery, and to those, as well as to the former class, it is hoped this work will be found an aid in the conduct of proceedings which have now become so important a branch of the business of the Court. It appears by a list* lately published, that whilst about 3,500 Companies have been formed and registered,

* The Joint Stock Company's List, 1865. Leighton, Fleet Street.

or registered only, since the year 1856, about 1000 have ceased to exist, and the present mania for formation of Companies would appear to justify the opinion that in the course of time many more Companies will be wound up than have been hitherto. The principle of limited liability, whilst in itself of such vast utility in the extension of commerce, has led, and will no doubt in future lead, to the formation of Companies for objects which cannot possibly be carried out, or to attain which the parties having the conduct of the affairs of the Company are incapacitated, either by reason of the constitution of the Company itself or from other causes. It will also be found that, many Companies being purely speculative schemes, their final failure is a natural consequence.

The desire of the writer of the present work, has been to set out as clearly as possible the practice applicable to each particular stage in the winding up of a Company, and also the effect of numerous decisions which are reported on the subject. For this purpose, all the sections and rules relating to each subject have been collected together and printed in full, and the decisions and practice are then stated. By this means it is conceived the work will be useful as giving, in a collective form, all the sections and rules relating to any particular matter, and enabling the practitioner to refer thereto at once without having to search in various parts of the Act for sections applicable to the same matter but set out in different places.

Before concluding, the attention of the reader is pro-

posed to be drawn to the provisions of the Act of 1862 with regard to the registration of Companies, a knowledge of which will be essential, not only to those engaged in the winding up of Companies but to others. Firstly, as to Companies which *may* register under the Act of 1862. These Companies are :—

Any Company formed after the passing of the Act of 1862, consisting of seven or more members associated for any lawful purpose (see sect. 6).

Every Company existing at the commencement of the Act, including any Company registered under the Joint Stock Companies Acts, 1856 and 1857, the Joint Stock Banking Companies Acts, 1857, and the Act for enabling banking Companies to be formed on the principle of limited liability, consisting of seven or more members, and any Company formed after the passing of the Act of 1862, in pursuance of any Act of Parliament other than that Act, or of letters patent, or being a Company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members (sect. 180). But see *post*.

Every Joint Stock Company, however, must have a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having its members the holders of shares in such capital, or the holders of such stock, and no other

persons, and such Company, when registered with limited liability under the Act, is to be deemed a Company limited by shares (sect. 181).

It is not requisite that the Company should be a Joint Stock Company to enable it to register (sect. 184). But see exceptions to the above in sect. 179.

A Company may be registered with the sole view of its being wound up (sect. 180).

Secondly, as to Companies which *must* register under the Act.

These are, 1st. Every Company, association, or partnership, consisting of more than ten persons, formed after the commencement of the Act for the purpose of carrying on the business of banking, unless it is formed in pursuance of some other Act of Parliament or of letters patent. Banking Companies existing before the 7 & 8 Vict. c. 113 are not required to register.

2nd. Every Company, association or partnership, consisting of more than twenty persons, formed after the commencement of the Act for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, association, or partnership, or by the individual members thereof, unless it is formed in pursuance of some other Act of Parliament or of letters patent, or is a Company engaged in working mines, within and subject to the jurisdiction of the Stannaries (sect. 4).

3rd. Every insurance Company completely registered under the 8 Vict. c. 110, and

4th. Every Company required by any Act repealed by the Act of 1862 to register under the Joint Stock Companies Acts, or any one of such Acts, and which has not so registered (sect. 209).

The expression "The Joint Stock Companies Acts," is explained by sect. 175 to mean, the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability. The non-registration of Companies in pursuance of sect. 209, disables such Companies from suing or presenting a petition to wind up, and also creates other disabilities (sect. 210).

Thirdly. As to Companies which *cannot* register under the Act of 1862.

1st. No Company having the liability of its members limited by Act of Parliament or letters patent, and not being a Joint Stock Company as defined in sect. 181, is to register in pursuance of Part 7 of the Act.

2nd. No Company having the liability of its members limited by Act of Parliament or by letters patent, is to register under the Act, in pursuance of Part 7, as an unlimited Company, or as a Company limited by guarantee.

3rd. No Company that is not a Joint Stock Company, as defined in sect. 181, is to register, in pursuance of Part 7, as a Company limited by shares (and see sect. 179).

4th. A Bank of Issue cannot register as a limited Company in respect of such issue (sect. 182).

INTRODUCTORY CHAPTER

ON

THE FORMATION OF COMPANIES.

The practice on the formation, incorporation and registration of Companies and summary of the provisions of the Companies Act, 1862, relative to the distribution of capital, liability of members, and the management and administration of Companies and associations under the Act.

Joint Stock Companies are formed in six different ways. 1st. By royal charter ; 2nd, by letters patent, under the 7 W. 4 & 1 Vict. c. 73. 3rd, by special Act of Parliament, 4th, by registration under the Act of 1862. 5th, by deed of settlement, where the number of shareholders in the Company is less than twenty (except in the case of Banking Companies), and 6th, by registration under the Industrial and Provident Societies Act, 1862.

1.—COMPANIES ESTABLISHED BY ROYAL CHARTER.

The charter establishing these Companies is obtained upon petition to the Queen in counsel. The petition is engrossed and signed by the promoters and presented in

duplicate with three prints of the draft of the proposed charter printed with half margin, at the Privy Council Office, Downing Street. The petition is then referred by Her Majesty, through the Council, either to the Board of Trade, the Colonial Office or the Foreign Office, according to the place where it is intended the Company shall be established, or to the interests which will be affected thereby. The solicitor conducting the matter ascertains to which board or office the petition is referred, and puts himself in communication therewith, so as to supply any information that may be required.

By the 7 Wm. 4 & 1 Vict. c. 73, s. 32, it is provided that when an application for a charter shall have been referred, before any report shall be made to Her Majesty or the charter granted, notice of the application is to be inserted by the parties applying three several times in the *London Gazette*, and in one or more of the newspapers circulating within the county in which it is proposed that the principal place of business of such Company shall be established at intervals of not less than one week. The papers are usually two. These advertisements will therefore have to be inserted and the papers produced to the board or office to which the petition is referred. The application is then reported on by the Board of Trade, Colonial Office or Foreign Office as the case may be, and if the application is granted another copy of the draft charter may be required with all the alterations suggested during the progress of the matter before the board or other office for the purpose of being finally settled by the

Attorney and Solicitor General. The draft charter is accordingly referred to those law officers, and the solicitor communicates with them and pays their fees. When settled it is returned by the Attorney General to the Council Office and is then sent to the Home Office for completion and to have the great seal attached thereto. The solicitor will have to pay certain fees before the charter is delivered, and as the charter provides that the original or the enrolment thereof shall be evidence, it should be enrolled in the Court of Chancery.

Prior to the Act of 1862, the following course was sometimes adopted. Before the petition for the charter was presented a deed of settlement was executed, and the Company provisionally registered, and subsequently completely registered under the Act of 7 & 8 Vict. c. 110, and the charter was granted incorporating the Company in the terms of the deed of settlement, and confirming such deed, but making the special provisions mentioned in the charter. It would seem therefore that (the 7 & 8 Vict. c. 110 being repealed) the course would be to register any future Company under the Act of 1862, as a limited or unlimited Company, or a Company limited by guarantee, and then to apply for a charter. Companies thus formed are of course incorporated.

2.—COMPANIES ESTABLISHED BY LETTERS PATENT.

These Companies are established under the Act 7 Wm. 4 & 1 Vict. c. 73, by sect. 2 of which it is provided that Her Majesty may, by letters patent issued under the great seal,

grant to any Company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators or assigns of such persons, although not incorporated by such letters patent, any privilege or privileges which, according to the rules of the common law it would be competent to Her Majesty to grant to any such Company or body of persons in and by any charter of incorporation.

These letters patent are in fact the same thing as, though different in form to, a charter, except that the Company is not incorporated by such letters patent, and that there are provisions in the Act relative to letters patent which are not applicable to Companies established by charter. The letters patent are obtained in the same manner as a charter, as above detailed, and the same advertisements are to be inserted (sect. 32). A deed of partnership or association, or an agreement in writing of that nature, must however be executed in the form and containing the particulars set forth in sect. 5. The letters patent may provide for carrying on suits in the name of one of the officers of the Company appointed for the purpose, and for restricting the liability of the Company as set forth in sects. 3 and 4.

From the time the letters patent are granted returns have to be made to, and to be registered at, the Enrolment Office of the Court of Chancery, and not to the Registrar of Joint Stock Companies, as in the case of other Companies. The particulars of the returns required will be found in the Act, and also various special provisions for

the government of the Company and its affairs, and for the protection of the shareholders.

It is possible, having regard to the facilities for registration and incorporation under the Act of 1862, that few Companies will in future be formed by letters patent, but any such future Companies, as also Companies already so formed which are Joint Stock Companies, may be registered under sect. 180 of the Act of 1862, subject to the provisions of sect. 179, and their affairs may be wound up under such Act; and Companies already formed by letters patent which are not Joint Stock Companies may be registered under the Act of 1862 (sect. 184), subject to the provisions of sect. 179, and may be wound up under that Act.

3.—COMPANIES ESTABLISHED BY SPECIAL ACT OF PARLIAMENT.

The proceedings for obtaining an Act of Parliament being in themselves of special character, a brief reference can only be made thereto, having regard to the limits of this work. Since the Act of 1862, Companies intending to obtain a special Act of Parliament have in some instances registered themselves under the Act of 1862, stating one of their objects to be the obtaining a special Act. The formation of the Company will, in this case, be as described hereafter, and the special Act afterwards obtained, so to speak, doubly incorporates the Company. All future Companies which are formed by special Act of Parliament without registration may be registered under

sect. 180 of the Act of 1862, subject to the provisions of sect. 179, and whether registered or not may be wound up under that Act.

4.—COMPANIES ESTABLISHED BY REGISTRATION UNDER THE
ACT OF 1862.

By sects. 6 and 7 of the Act of 1862 any seven or more persons may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated Company with or without limited liability. The liability of the members of the Company may be limited by the memorandum of association:—1st. Either to the amounts unpaid on the shares held by them respectively, or, 2nd. To such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up; or, 3rd. The Company may be registered with unlimited liability.

1st. Registration of a Company limited by Shares.

The first step towards the registration of a Company under the Act of 1862 is the preparation of the memorandum of association. The memorandum in the case of a Company limited by shares is to set forth (1st.) “The name of the proposed Company with the addition of the word ‘Limited’ as the last word of such name. (2nd.) The part of the United Kingdom, whether England,

Scotland or Ireland, in which the registered office of the Company is proposed to be situate. (3rd.) The objects for which the proposed Company is to be established. (4th.) A declaration that the liability of the members is limited, and (5th.) The amount of the capital with which the Company proposes to be registered, divided into shares of a certain fixed amount." No subscriber is to take less than one share, and each is to write opposite his name in the memorandum of association the number of shares he takes. The memorandum of association is prepared according to Form A. in the 2nd Schedule to the Act, it is printed on cream coloured foolscap, and is then to be signed by the subscribers in the presence of and to be attested by one witness at the least. It is also to be stamped with a 35s. deed stamp (sect. 11). When thus completed, it is registered at the office of the Registrar of Joint Stock Companies, Serjeants' Inn, Fleet Street, who is entitled to receive upon such registration the fees set forth in Table B. of the Act. Along with this memorandum there *may* be registered articles of association which are to be signed by the subscribers to the memorandum of association and witnessed by one witness at the least (sect. 16). The articles are to be expressed in separate paragraphs, numbered arithmetically, and may adopt all or any of the provisions contained in Table A. in the 1st Schedule to the Act. They are printed in the same way as the memorandum of association, and must be stamped with a 35s. deed stamp, with 10s. followers

according to the length (sects. 14 and 16). It is not absolutely necessary however in the case of a Company limited by shares, that articles of association should be registered, but if they are not, or in so far as the articles (if any) do not exclude or modify the regulations contained in Table A., the last mentioned regulations are, so far as the same are applicable, to be deemed the regulations of the Company in the same manner and to the same extent as if they had been inserted in the articles of association and the articles had been duly registered (sect. 15). If no articles are registered the memorandum is registered, and marked outside "registered without articles of association," and upon such registration, or upon the registration of the articles (if any), the registrar is to give a certificate that the Company is incorporated as a limited Company (sect. 18).

It is sometimes desired to have specific articles of association for the particular Company, but it is found that in consequence of their special and lengthy character the stamp duty thereon would be large. The following course has, under such circumstances, been adopted:—

The Company is registered "without articles of association," and then a special general meeting of the subscribers to the memorandum of association and of the other members of the Company (if any) is called for the purpose of passing a special resolution, under sect. 50, altering the regulations of the Company contained in Table A., and making new regulations in exclusion

thereof. The definition of a "special resolution" is contained in sect. 51. The following is a form of resolution which has been passed under such circumstances:—

Resolved,—“That the regulations contained in Table A. of the 1st Schedule to the Companies Act, 1862, shall not apply to this Company; but that in lieu thereof the regulations now produced and signed by _____, the chairman of this meeting, shall be the Company's articles of association.” The resolution confirming the same (see sect. 51) was as follows:—Resolved, “That the resolution passed at a special meeting of this Company on the _____ day of _____ last, ‘That &c.’ [copy resolution as above] be confirmed.”

Upon this “special resolution” being passed, it is printed, and forwarded within fifteen days to the registrar of Joint Stock Companies, to be recorded by him, and the articles of association accompany it; a fee of 5*s.* is then paid (sect. 53 and Table B.). A copy of the resolution is to be forwarded to each member, on payment of 1*s.* each (sect. 54).

When the Company has thus become incorporated as aforesaid, the subscribers to the memorandum of association, together with such other persons as may from time to time be members of the Company, thereupon become “a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, with

power to hold lands, but with such liability on the part of the members to contribute to the assets of the Company in the event of the same being wound up as is hereinafter mentioned" (sect. 18). The certificate of incorporation is prepared by the registrar, and delivered to the party registering in the course of a few days. It is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with (sect. 18).

Notice of the situation of the registered office of the Company has then to be given. A form of notice may be obtained, which, when filled up, may be signed by one of the directors of the Company. If the Company carries on business without having a registered office, and without giving this notice, a penalty of 5*l.* per day is incurred (sects. 39, 40). Sect. 41 provides for the publication of the name of a limited Company outside its office or place of business in a conspicuous place. It is also to have its name engraven on its seal, and mentioned in all notices, advertisements, bills of exchange, and other documents. Immediately after the registration of the Company directors will be appointed in manner provided by the articles of association. Table A. provides that "until directors are appointed, the subscribers to the memorandum of association shall be deemed to be directors."

The *books* required to be kept by a limited Company are,—a *register of members*, which is to contain the names and addresses of its members, their occupation, and the

number of shares held by each, and the distinguishing number thereof, the amount paid, agreed, or considered to be paid thereon, and the dates when the several persons became members, or ceased to be so (sect. 25). No entry of any trust is to be made on the register (sect. 30).

An *annual list of members* is also, within seven days after the fourteenth day succeeding the day of the ordinary general meeting, to be inserted in a separate part of the register containing the particulars set forth in sect. 26, and a copy is forthwith to be sent to the Registrar of Joint Stock Companies, under a penalty of 5*l.* per day (sect. 26).

A *register of mortgages* is also to be kept (sect. 43), and a *minute book of meetings*, the entries wherein are to be signed by the chairman of the meeting at which the resolutions are passed or proceedings had, or by the chairman of the next succeeding meeting.

All appointments of directors, managers or liquidators, are to be deemed valid, and all acts done by them are to be valid, notwithstanding any defect that may afterwards be discovered in their appointment or qualifications, if the minutes of the meeting at which they were appointed are signed as above (sect. 67).

The following *books* are also kept, viz. :—A *register of transfers* of shares, a *share ledger* and *cash book*, *directors' attendance book*, and the necessary books of account for the particular business to be carried on.

There is no objection to the prospectus of the Company

being issued before the registration, and before applications for shares are received, and that course is very often adopted, but in such cases any material variation between the memorandum and articles of association and the prospectus would render the contract to take shares void. (*Re Scottish Finance Banking Company, Limited, Ship's Case*, 13 W. R. 450 ; see also *Wordsworth's Law of Joint Stock Companies*, 3rd ed., pp. 16 to 21.) Should the prospectus be issued before the full incorporation of the Company, the form of application for shares should empower the promoters to apply the whole or any necessary part of the deposit money in payment of preliminary expences ; otherwise if the scheme fails the whole of the deposits may be recovered back. (*Walstab v. Spottiswoode*, 15 M. & W. 501.)

The *shares of the Company* are to be numbered, and are personal estate (sect. 22). A certificate under the common seal of the Company specifying the shares held by a member is *prima facie* evidence of the title to such shares (sect. 31).

It is not requisite for the members to sign any deed agreeing to take shares in the Company. It is sufficient if they sign an application for the shares on the form generally printed upon the prospectus, and if that application is followed by allotment of the shares and payment by the member of the deposit thereon (sect. 23). A form of application for shares generally used is as follows :—

“To the directors of Company (Limited).

“Gentlemen,—Having paid the sum of £ to
your Bankers, I hereby request that you will allot me
 shares of £ each in the said Company
(Limited), and I agree to become a member of the said
Company, and to accept such shares, or any smaller num-
ber, on the terms of the articles of association, which I
undertake to execute. And I request you to place my
name on the register of shareholders in respect of the
shares allotted to me.

“Name in full - - - -

“Address in full - - - -

“Occupation - - - -

“Date .”

A receipt by the bankers of the proposed Company is
printed beneath the application. It need hardly be
observed that the letter of allotment should not differ
in terms from the application, or the contract would not
be complete.

Shares may be transferred by the personal representa-
tive of the deceased member, without such personal
representative being himself a member of the Company
(sect. 24). The liability of the present and past members
of the Company is defined by sect. 38. A past member
is only liable for a period of one year after he ceases to
be a member for debts due before he transferred his
shares, and not at all if the existing members are able to
pay. The liability of members is limited to the amount
unpaid on their shares.

The register of members is to be open for inspection by the members, and by any other person, on payment of 1s., at the registered office of the Company, not less than two hours every day during business hours, and copies of any entries therein are to be furnished at the rate of 6d. per folio (sect. 32); but the Company has power, upon giving notice by advertisement, to close the register for any time or times not exceeding in the whole thirty days in each year (sect. 33). Any improper entry or omission of entry in the register may be rectified or supplied on application by motion or petition to any superior Court of law or equity (sects. 35, 36). And see the Chapter on Contributories and Index of Cases.

The time for and manner of service of notices by the Company will be provided for by the articles of association (and see paragraphs 95, 96, 97, Table A.). They will generally have to be served by post in a prepaid letter addressed to the members. They may be signed by any director or secretary, or other authorised officer of the Company, may be in print or writing, or partly one way and partly the other, and need not be under the seal of the Company (sect. 64).

We will now notice some general clauses of the Act which affect the management and administration of Companies when established.

No Company must carry on business with less than seven members (sect. 48).

A Company limited by shares may so far alter the memorandum of association (if authorized to do so by its regulations as originally framed, or as altered by special resolution,) as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock (sect. 12). Notice of such consolidation or conversion of shares into stock must be given to the registrar of Joint Stock Companies (sect. 28), and the register of members and the list sent to the registrar must show the amount of stock held by each member (sect. 29). Notice of the increase of the capital must also be given within fifteen days from the passing of the resolution authorizing such increase (sect. 34).

A Company limited by shares may alter its articles of association by special resolution passed as before described (sect. 50). It may also, with the sanction of a special resolution, and with the approval of the Board of Trade, change its name. The new name is to be entered by the registrar, who is to issue a certificate of incorporation altered accordingly. Such change of name is not, however, to affect any rights or obligations of the Company, or any proceedings that may be pending (sect. 13). A Joint Stock Company cannot take the name of a corporation. (*Regina v. Registrar of Joint Stock Companies*, 14 Jur. 348.) There must not be identity of names in

Companies, but if such should happen through inadvertence, the last registered Company may change its name, with the sanction of the registrar (sect. 20).

Companies formed for the purpose of promoting "art, science, religion, charity or any other like object not involving the acquisition of gain by the Company, or the individual members thereof," cannot hold more than two acres of land without the sanction of the Board of Trade (sect. 21).

Promissory notes or bills of exchange may be made, accepted or indorsed in the name or on behalf of the Company by any person acting under the authority of the Company (sect. 47.)

Contracts by and with the Company, except for trivial acts, should be entered into under the seal of the Company. (See on this subject Wordsworth's Law of Joint Stock Companies, pp. 140 and 425, and Thring's Law and Practice of Joint Stock Companies, vol. 1, pp. 77 to 82, and vol 2, p. 64.)

Deeds may be executed abroad under a power of attorney from the Company, sealed with its common seal (sect. 55).

A general meeting of the Company must be held once a year. At the meetings, where there are no regulations as to the same, every member is to have one vote, seven days notice of such meeting is to be given, and five members may summon it, and the members present may in that case elect the chairman (sects. 49, 52.)

In an action for payment of calls or other monies due from a member the declaration need only allege that the defendant is a member, and is indebted in respect of the call made or other monies due, whereby an action or suit has accrued to the Company (sect. 70). (See, as to making a call, *Cornwall Consolidated Mining Company v. Bennett*, 6 Jur. N. S. 539). A defendant in an action brought by a limited Company may apply for security for costs where it is shewn that the assets of the Company may be insufficient to pay such costs if the defendant should be successful (sect. 69). Disputes may be submitted to arbitration (sect. 72). An assignee of any chose in action formerly belonging to a Company may sue in his own name (sect. 157).

Every limited banking Company, and every insurance Company, and deposit, provident or building Society under the Act of 1862, before it commences business, and on the first Monday in February and the first Monday in August in every year, is to prepare a statement in the form marked D. in the 1st Schedule to the Act, or as near thereto as possible, and put it up in a conspicuous place in the registered office or branch office of the Company. A copy is to be given to every member and to every creditor on payment of 6*d.* (sect. 44).

Except in the case of a banking Company, on the application of members holding one-fifth of the whole shares of the Company for the time being issued, the Board of Trade may appoint inspectors to examine into the affairs of the Company, and to report thereon as the

Board may direct. In the case of a banking Company that appointment may be made on the application of members holding not less than one-third part of the whole shares of the Company for the time being issued (sect. 56). The application must be supported by evidence (sect. 57). The examination is to take place in manner pointed out in sect. 58, and the result reported to the Board of Trade, who will forward a copy of the report to the registered office of the Company, and furnish a further copy to other persons as mentioned in sect. 59. A copy of this report under the seal of the Company is to be admissible as evidence of the opinion of the inspectors. The Company may also appoint inspectors (sects. 60 and 61). See, as to the validity of appointments, sect. 67.

All the documents registered at the office of the registrar of Joint Stock Companies may be inspected, and copies thereof are to be furnished ; sect. 174 (5).

Attention having thus been drawn to the provisions of the Act relating to the management and administration of Companies, it remains to be added that the clauses of the articles of association will of course require careful attention, and, as before mentioned, where there are no articles Table A. of the schedule to the Act applies. It is not proposed here to set out the clauses of that Table.

2nd.—Registration of Companies limited by Guarantee, and not having a Capital divided into Shares.

These Companies are (with some special exceptions)

formed and registered in the same way as Companies limited by shares, and are also, with some special exceptions, applicable to the particular kind of Company affected by the same provisions as to the liability of the members and the management and administration of the Company. These exceptions are as follows:—The memorandum of association is prepared as in Form B. of the 2nd Schedule to the Act, and must contain particulars of the name of the Company, the place in the United Kingdom where the registered office of the Company is situated, the objects for which the Company is established, and the amount which every member of the Company undertakes to contribute whilst he is a member, or within one year after (sect. 9), and *must* be accompanied by articles of association, wherein is to be stated the number of members with which the Company proposes to register. The promoters may however adopt the whole or any part of the provisions in Table A. A Company limited by guarantee cannot alter its memorandum of association (sect. 12), but is not prevented from altering its articles. The Company is to keep, at its registered office, a register containing the names, addresses and occupations of its directors and managers, and send to the registrar of Joint Stock Companies a copy of such register, and is to notify to the registrar any change that takes place in the appointment of such directors or managers (sect. 45), under a penalty of 5*l.* per day. Any increase in the number of members beyond the registered number is, under a penalty of 5*l.* per day, to be notified to the regis-

trar of Joint Stock Companies within fifteen days from the time the increase has been resolved upon, or has taken place; and such increase is to be recorded by the registrar (sect. 34). No contribution is to be required from a member in a Company limited by guarantee beyond the amount of the undertaking in the memorandum of association (sect. 38). Table A. in the first schedule to the Act will not, of course, apply (sect. 15) unless expressly adopted.

3rd.—Registration of Companies limited by Guarantee, and having a Capital divided into Shares.

A Company may be limited by guarantee, and also have a capital divided into shares. A form of the memorandum and articles of association will be found in Form C. in the 2nd Schedule to the Act. The articles in this case must state the amount of capital with which it is proposed to register, and each shareholder is to take one share at the least (sect. 14.) Companies formed on this principle will be governed by all the provisions in the Act relating to Companies limited by shares or by guarantee alone, except where such provisions are inconsistent with the nature of such Companies.

4th.—Registration of Unlimited Companies.

These Companies will in practice have a capital divided into shares, but it is not essential. Where they have such a capital they are formed in the same manner, and are

governed by the same provisions of the Act as Companies limited by shares, except where those provisions are made by the Act to relate exclusively to such last mentioned Companies ; and in particular the memorandum of association of an unlimited Company need only state the name of the Company, the part of the United Kingdom where the registered office of the Company is to be situated, and the objects of the Company (sect. 10). Articles of association must be filed (sect. 14). Table A. will not apply. Publication of the name of the Company (sect. 41) is unnecessary ; nor is it requisite to keep a register of mortgages (sect. 43). If the Company is registered without a capital divided into shares, the provisions as to similar Companies limited by guarantee will apply, so far as the nature of the case will admit.

5.—FORMATION OF COMPANIES BY DEED OF SETTLEMENT
WHERE THE NUMBER OF SHAREHOLDERS IS LESS THAN
TWENTY (EXCEPT IN THE CASE OF BANKING COMPANIES).

These Companies are nothing more than common partnerships, and every member would be liable to the creditors for the debts, unless the creditor had specific notice of the authority to contract being limited. (See Wordsworth's Law of Joint Stock Companies, 3rd ed. p. 414.)

6.—COMPANIES FORMED UNDER THE INDUSTRIAL AND
PROVIDENT SOCIETIES ACT, 1862.

This Act relates to Companies which are formed "for

the purpose of carrying on any labour, trade or handicraft, whether wholesale or retail, except the working of mines, and except the business of banking, and of applying the profits for any purpose allowed by the Friendly Societies Acts, or otherwise permitted by law." No member can hold an interest exceeding more than 200%. They are formed in the same way as Friendly Societies, and are registered with the registrar of such Societies upon a copy of the rules being approved and recorded. A full copy of the Act will be found at the end of this work.

REGISTRATION OF COMPANIES EXISTING AT THE TIME OF
THE COMMENCEMENT OF THE ACT.

In the Introduction to this work it has been shewn what Companies existing at the commencement of the Act may, must, or need not register. It is probable that all such Companies which have been desirous of obtaining the benefit of registration under the Act, or which are obliged to register, have already done so; but as many Companies are not obliged to register, and may not do so until some future time, or, perhaps, only for the purpose of winding up, it is proposed to set out the practice on such registration. It should be remembered that the following statement as to the registration of Companies is subject to the provision that the only Companies which cannot register at all are Companies which are not Joint Stock Companies within the meaning of sect. 181, and

which have their liability limited by Act of Parliament, or letters patent (sect. 179), and that there are three restrictions on registration: 1st, No Company having the liability of its members limited by Act of Parliament, or by letters patent, is to register in pursuance of Part 7 of the Act of 1862 as an unlimited Company, or as a Company limited by guarantee; 2nd, No Company that is not a Joint Stock Company as defined in sect. 181, is to register as a Company limited by shares (sect. 179); and 3rd, No Banking Company claiming to issue notes in the United Kingdom is to register as a limited Company in respect of such issue, but is to continue unlimited in respect thereof.

Subject to the above and to the assents required by sect. 179 being obtained every Company existing at the commencement of the Act including any Company registered under the Joint Stock Companies Acts, consisting of seven or more members, may register (sect. 180).

1st. Registration as an unlimited Company of a Joint Stock Company existing at the commencement of the Act which has not been registered at all or registered only under the 7 & 8 Vict. c. 110.

A general meeting of the Company is called for the purpose of passing a resolution that the Company be registered under the Companies Act, 1862, of which notice must be given. At the meeting the resolution

must be assented to by a majority of the members present personally, or by proxy in cases where proxies are allowed by the regulations of the Company (sect. 179, clause 4). In computing any such majority when a poll is demanded regard is to be had to the number of votes to which the members are respectively entitled according to the regulations of the Company (sect. 179).

- (1). The resolution is to be printed and forwarded to the Registrar of Joint Stock Companies with the following papers.
- (2). An application for certificate of registration.
- (3). A copy of the deed of settlement or other instrument constituting or regulating the Company (sect. 183, clause 2) (see exception sect. 209.)
- (4). A list of the members, their addresses and occupations, made up to a day not being more than six clear days before the day of registration, shewing also the number of shares held by the members respectively and their numbers (clause 1), or a statement of the amount of stock (if any) belonging to the Company, and the names of the persons who were holders of such stock on such last mentioned day (sect. 185).
- (5). A statement of the registered office of the Company.
- (6). A declaration verifying the particulars contained in the above documents made by the directors of the Company, or any two of them, or by any two other principal officers of the Company.

The registrar may also require such evidence as he thinks necessary for the purpose of satisfying him whether the Company is a Joint Stock Company as defined in sect. 181 or not (sect. 187).

No fees are to be charged on the registration of these Companies (sect. 189). The fee of 5s. mentioned in Table B. for registration of any document authorized to be registered other than the memorandum of association is payable.

Upon compliance with the above particulars the registrar is to certify under his hand that the Company "is incorporated under the Act," and "thereupon such Company is incorporated and shall have perpetual succession and a common seal with power to hold lands" (sect. 191).

2nd. Registration as a Company limited by shares, or as a Company limited by guarantee of a Joint Stock Company existing at the commencement of the Act of 1862, which has not been registered at all or registered only under the 7 & 8 Vict. c. 110.

The same course is to be pursued as on registration of a similar Company as an unlimited Company except as follows :—

The majority assenting to the resolution must consist of not less than three-fourths of the members present personally, or by proxy, at the general meeting, and the resolution must be to register as a limited Company (sect. 179, clause 5, and sect. 190). The same documents are

to be forwarded to the registrar of Joint Stock Companies except that the list of members, &c., must be accompanied by a statement specifying "The nominal capital of the Company and the number of shares into which it is divided, the number of shares taken, and the amount paid on each share, the name of the Company, with the addition of the word 'limited' as the last word thereof" (sect. 183, clause 3). On registration of a banking Company, with limited liability, notice is to be given to the customers (sect. 188).

Also, if the Company is to be registered as a Company limited by guarantee, a resolution must be passed declaring "that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year after, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount" (sect. 179, clause 6). This resolution must accompany the assent to its being registered as limited by guarantee, and the statement as to the capital, number of shares, &c. (if divided into shares), must specify the resolution (sect. 183, clause 3).

If either of these Companies were limited before registration by some other Act of Parliament, or by letters

patent, no fees are payable on registration, but if not fees are payable (sect. 189).

3rd. Registration under the Act of 1862 of a Company registered under the Joint Stock Companies Acts.

This registration is unnecessary, as the Act of 1862 is by sect. 175 and 176 to apply to such Companies (see also *Re Torbay Bath Company*, 32 Beav. 581).

Should it be desired, however, so to re-register any Company it would appear that such of the resolutions above mentioned as are applicable to the re-registration desired must be passed and forwarded to the registrar, together with (in the case of an unlimited Company) an application for re-registration, a list of the members, statement of the registered office of the Company, and declaration verifying such documents above mentioned, and (in the case of a limited Company) the additional statement as to capital, &c., and (in the case of a Company limited by guarantee) the resolution as to the guarantee above mentioned (see as to the fees on registration, sect. 189).

4th. Registration of a Company not being a Joint Stock Company (and therefore not registered at all), as an unlimited Company, or as a Company limited by guarantee.

In the registration of these Companies the same requisitions are necessary as on a registration of a Joint Stock Company as an unlimited Company, or as a Company limited by guarantee, not having a capital divided into shares, except that in the place of the list of members there is to be delivered a list of the directors or other managers, if any, of the Company (sect. 184; see as to fees on registration, sect. 189).

Banking Companies of more than ten persons are now formed and are to be registered under the Joint Stock Companies Act, 1862. Such Banking Companies as were formed under the 7 Geo. 4, c. 46, may still carry on business under such Act. (See also 3 & 4 Wm. 4, c. 83, and 3 & 4 Wm. 4, c. 98.)

Benefit Building Societies are established under 6 & 7 Wm. 4, c. 32.

Friendly Societies are formed under 18 & 19 Vict. c. 63, 21 & 22 Vict. c. 101, and 23 & 24 Vict. c. 58. They are wound up under 17 & 18 Vict. c. 56, Discharge Act.

Industrial and Provident Societies are established under 25 & 26 Vict. c. 87. See sect. 3, and thence also the Friendly Societies Acts.

Loan Societies are formed under 3 & 4 Vict. c. 110, 26 & 27 Vict. c. 56.

Mining Companies are established on the Cost Book

principle, or may be registered under the Act of 1862. In common with others they may be established by royal charter or letters patent.

Railways incorporated by Act of Parliament are wound up under the Railway Abandonment Act, 13 & 14 Vict. c. 83, and by the Court of Chancery, when a warrant is granted for the abandonment of the whole railway (sect. 31).

Scholastic, literary and scientific institutes are formed under 17 & 18 Vict. c. 112 (see also 6 & 7 Vict. c. 36).

ADDENDA.

Page 18.—Bankrupt shareholders. The Author believes that the petition by a bankrupt shareholder was in one case allowed under special circumstances, but finds that the case is not reported. *Primâ facie* a bankrupt cannot petition.

Page 26, line 11.—It is stated that this affidavit is not required. The Author submits that without it in a country case there might not be evidence that the papers in which the advertisements are inserted are those required by Rule 2. For this reason, and as having seen it used in practice, he has thought it better to retain the text and the form at page 223.

Page 109, line 11 from bottom, and page 120, 1st line.—See opinion expressed in *The Hatfield Cash Company* (11 W. R. 971). That however was a case under the Act of 1856.

CASES REPORTED WHILST AT PRESS.

Page 19, 2nd line.—See Appeal, *Bowes v. Hope Mutual Life Assurance &c. Society* (13 W. R. 790).

Page 19, 4th line.—But see *Constantinople Hotels Company* (13 W. R. 851).

Page 111, 9th line.—See *Fountain's Case* (13 W. R. 667).

Page xii.—Contributory, past holder liable. *Belhaven's Case*, reversed on appeal (13 W. R. 849).

Page xv. — Contributory, party indemnifying holder not liable, add *Buggs' Case*, decided 24th June, 1865.

ERRATA.

Page 22, line 12 from bottom, for "in one or" read "once in."

98, line 12 from bottom, after "advertised" read "if so directed."

114, line 5 from top, for "of the insertion of" read "the papers containing."

215, lines 8 and 16 from top, for "Company's" read "Companies."

364, between sects. 198 and 199, add "PART VIII."

ERRATA—continued.

Page 49 line 8, from top, *after* "attend," *read* "at the expense of the estate."

149, line 7 from top, *for* "Company," *read* "contributories."

112, line 12 from top, and page 181, line 14. It is doubtful whether this proposition is not put too broadly. Compare ss. 38 and 101. At present the question what set-off can be allowed in the case of a limited Company, and, if any, when and how, is unsettled.

403. The first part of Rule 56 has been accidentally omitted.

"56. The 48th, 49th, 50th, 51st, 52nd and 55th Rules of the 35th of the Consolidated Orders shall apply to all certificates of the Chief Clerk, in the matter of the winding up of any Company; nevertheless," &c.

ously wound up in the High Court of Chancery, in which case "the Court" shall mean the High Court of Chancery :

* The expressions "the Act" and "the Act of 1862," throughout this work, mean The Joint Stock Companies Act, 1862, and the expression "rule," unless otherwise specified, means one of the rules under the General Order of 11th November, 1862.

lxiv

ADDENDA.

See Fountain's Case (13 W.)

A MANUAL, &c. &c.

PART I.

CHAPTER I.

THE JURISDICTION OF THE COURT.

WHAT COMPANIES THE COURT OF CHANCERY HAS POWER TO WIND UP.

× The first question which arises on proceeding to wind up a Company is in what Court the Company must be wound up. To answer this the following section of the Act* of 1862 must be referred to:—

Definition of
the Courts.

81. The expression "the Court," as used in this part (4) of this Act, shall mean the following authorities; (that is to say,)

In the case of a Company engaged in working any mine within and subject to the jurisdiction of the Stannaries,—the Court of the Vice Warden of the Stannaries, unless the Vice Warden certifies that in his opinion the Company would be more advantageously wound up in the High Court of Chancery, in which case "the Court" shall mean the High Court of Chancery :

* The expressions "the Act" and "the Act of 1862," throughout this work, mean The Joint Stock Companies Act, 1862, and the expression "rule," unless otherwise specified, means one of the rules under the General Order of 11th November, 1862.

In the case of a Company registered in England that is not engaged in working any such mine as aforesaid,—the High Court of Chancery :

In the case of a Company registered in Ireland, the Court of Chancery in Ireland :

In all cases of Companies registered in Scotland, the Court of Session in either division thereof:

Provided that where the Court of Chancery in England or Ireland makes an order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the Company is situate ; and thereupon such last mentioned Court of Bankruptcy shall, for the purposes of winding up the Company, be deemed to be “the Court” within the meaning of the Act, and shall have for the purposes of such winding up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland, as the case may require.

Clause 2 of the above section applies to all Companies registered in England that are not engaged in working any mines within and subject to the jurisdiction of the Stannaries. This includes not only Companies formed and registered under the Act of 1862, but by reason of the sections next referred to, Companies formed and registered under the Joint Stock Companies Acts as defined in section 175, Companies formed before the last mentioned Acts but registered thereunder, and Companies formed before or since the last mentioned Acts, but registered under the Act of 1862 only, that are not engaged in working such mines.

By sections 176 and 177 the Act is to apply to Companies formed and registered, or registered only, under the Joint Stock Companies Acts, in

both cases with some special reservations stated therein.

175. The expression "Joint Stock Companies Acts," as used in this Act, shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability," or any one or more of such Acts as the case may require; but shall not include the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies."

Definition of the Joint Stock Companies Acts.

176. Subject as hereinafter mentioned, this Act, with the exception of Table A. in the first schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited Company as if such Company had been formed and registered under this Act as a Company limited by shares, and in the case of a Company other than a limited Company as if such Company had been formed and registered as an unlimited Company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Application of Act to Companies formed under Joint Stock Companies Acts.

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act, with this qualification, that

Application of Act to Companies registered under Joint Stock Companies Acts.

wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

The registration of these Companies under the Act of 1862 is not requisite. (*The Torbay Bath Company*, 32 *Bea.* 581.)

By section 196 the Act applies to Companies formed before it was passed, and subsequently registered under it, but not under the Joint Stock Companies Acts.

Effect of
Registration
under Act.

196. When a Company is registered under this Act in pursuance of this part (7) thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following; (that is to say),

- (1). That table A. in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this part thereof:
- (2). That the provisions of this Act relating to the numbering of shares shall not apply to any Joint Stock Company whose shares are not numbered:
- (3). That no Company shall have power to alter any provision contained in any Act of Parliament relating to the Company:
- (4). That no Company shall have power, without the

sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the Company :

- (5). That in the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs, charges, and expenses of winding up the Company so far as relates to such debts or liabilities as aforesaid ; and every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply :
- (6). That nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act have been contained in the memorandum of association, and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the Company.

The Court of Chancery has likewise jurisdiction to wind up Companies which have never been registered at all (except Railway Companies incorporated by Act of Parliament and Companies engaged in working mines within and subject to the jurisdiction of the Stannaries) either under the Joint Stock Companies Acts or under the Act of 1862.

Application of Act to unregistered Companies.

Winding up
of unregis-
tered Com-
panies.

199. Subject as hereinafter mentioned, any partnership, association, or Company, except railway Companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered Company, may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to such Company, with the following exceptions and additions :

- (1). An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate ; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business ; moreover the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding up of such Company be deemed to be the registered office of the Company.
- (2). See post, voluntary winding up.

From the above sections it will be seen that all Companies in England and Wales, whether regis-

tered or unregistered, except Railway Companies duly incorporated by Act of Parliament and Companies engaged in working mines within the jurisdiction of the Stannaries are to be wound up in the Court of Chancery. A further exception, however, has been made in the case of Industrial and Provident Societies by the Act 25 & 26 Vict. c. 87, which provides that any Society registered under that Act is to be wound up in the County Court of the district in which the office of the Company is situate, although they are still wound up under the Act of 1862. It has been held that a Benefit Building Society is not within the Industrial and Provident Societies Act, also that a Friendly Society which had ceased to exist for many years might be wound up in Chancery. Although, except in the cases above mentioned, the Court of Chancery has sole jurisdiction to wind up Companies, yet power is given to that Court to depute its authority to the Court of Bankruptcy if it thinks fit. (*Vide* sect. 81.)

Companies engaged in working mines within and subject to the jurisdiction of the Stannaries are excluded from the jurisdiction of the Court of Chancery, unless the Vice Warden certifies that the Company would be more advantageously wound up by that Court. On a recent application to the Master of the Rolls for an order to wind up a mining Company registered within the jurisdiction of the Stannaries, on the ground

that it had never actually worked any mines, the Court refused to make the order, remarking "that the sections of the Act relating to mines, nos. 4, 68, 81 and 174, all treated, not the fact of working at the moment, but the object for which the Company was established, as the test for determining the jurisdiction." (*Re East Botallack Consolidated Mining Company, Limited*, 13 W. R. 197.)

A mining Company engaged in working mines within the jurisdiction of the Stannaries, although registered under the Joint Stock Companies Acts, or under the Act of 1862, would still be wound up by the Vice Warden of the Stannaries.

By section 83 it is provided that "Any Judge of the High Court of Chancery may do in chambers any act which the Court is hereby authorized to do."

CHAPTER II.

THE CIRCUMSTANCES UNDER WHICH A COMPANY MAY BE WOUND UP.

1st. Registered Company.

The provisions of the Act of 1862, defining the circumstances under which the Court may exercise the jurisdiction given it by the Act in the case of Companies registered under that Act or the Joint Stock Companies Acts, will be found in the following sections :—

Winding up by Court.

79. A Company under this Act may be wound up by the Court as hereinafter defined, under the following circumstances ; (that is to say,) Registered Companies.

- (1). Whenever the Company has passed a special resolution requiring the Company to be wound up by the Court :
- (2). Whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year :
- (3). Whenever the members are reduced in number to less than seven :
- (4). Whenever the Company is unable to pay its debts :
- (5). Whenever the Court is of opinion that it is just and equitable that the Company should be wound up :

80. A Company under this Act shall be deemed to be unable to pay its debts,

- (1). Whenever a creditor, by assignment or otherwise, to whom the Company is indebted, at law or in equity, in a sum exceeding 50*l.* then due, has served on the Company, by leaving the same at their

registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor :

- (2). Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the Company, is returned unsatisfied in whole or in part :
- (3). Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made :
- (4). Whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

The "Special Resolution" referred to in subsection 1 of sect. 79 is defined in section 51 as follows :

51. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy (in cases where by the regulations of the Company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed : At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of

the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the Company: In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

By the Act of 1856, which is now repealed, it was provided amongst other provisions that, whenever three-fourths of the capital of the Company had been lost or become unavailable, the Company might be wound up, but that provision led to improper applications to the Court and has therefore not been re-enacted. The last sub-sections of section 79 extends to cases *ejusdem generis* to those in the other sub-sections, and it is apprehended that one of the elements mentioned in those other sub-sections must exist in a greater or less degree in all applications to the Court.

It is possible for the Company to avoid coming within sub-section 2 of section 79, by doing merely one substantial *bonâ fide* act of business which would be sufficient for the purpose, and by the same means avoiding suspending its business for a whole year.

Under the fourth sub-section, it has been held that the Court will not try questions of disputed debt, and the Lords Justices have dismissed a petition where there was such a dispute. (*The Catholic Publishing Company Limited*, 12 W. R. 538.)

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It is important, on inquiring into the circumstances under which the Court may exercise its powers, to observe that it has full discretionary power to make such order as it thinks fit on the hearing of the petition for winding up, and may, if it thinks proper, refer it to Chambers, to inquire as to the existence of the required circumstances under which a Company may be wound up, and act upon the certificate made upon such inquiry. By the following section it is provided as follows :—

Course to be pursued by Court on hearing petition.

86. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

It is further to be borne in mind, that the Court has power, even at this early stage of the proceedings in the winding up of a Company, to direct a meeting of the creditors or contributories of the Company to be called for the purpose of ascertaining their wishes as to the winding up thereof, (see sect. 91) ; and this power may be very useful in case of doubtful solvency, or where it may be apparent that the Company, though in temporary difficulties, have good reason for expecting satisfactorily to surmount them. (See *Re Parisian Factage Company*, 13 W. R. 330.)

Court may have regard to wishes of creditors or contributories.

91. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the

creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the Company.

See Rules under this section, Chapter VI.

From these remarks it will be seen that as a general rule the Court has full power to exercise its discretion as to ordering the Company to be wound up; but if an order is made to that effect, it must be on one of the grounds set out in the sub-sections to sect. 79.

2nd. Unregistered Company.

The circumstances under which Unregistered Companies may be wound up by the Court are set out in sect. 199 of the Act of 1862, and are as follows:—

- (3). The circumstances under which an unregistered Company may be wound up are as follows; (that is to say,)
 - (a). Whenever the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b). Whenever the Company is unable to pay its debts;
 - (c). Whenever the Court is of opinion that it is just and equitable that the Company should be wound up:
- (4). An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts,
 - (a). Whenever a creditor to whom the Company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding 50*l.* then due, has served on the Company, by leaving the same at the

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principal place of business of the Company, or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor :

- (b). Whenever any action, suit, or other proceeding has been instituted against any member of the Company for any debt or demand due, or claimed to be due, from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary, or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same :
- (c). Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied :
- (d). Whenever, in the case of an unregistered Company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery, mate-

rials, and effects of such mine has been made in a creditor's suit in the Court of the Vice-Warden :

- (e). Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made :
- (f). Whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

The difference between the circumstances under which registered and unregistered Companies may be wound up by the Court will, on comparing the sections applicable to both cases now before the reader, be found to be somewhat important. In the case of an unregistered Company, the following circumstances are omitted in the enumeration of those under which such Companies may be wound up, namely, "Whenever the Company has passed a special resolution, requiring the Company to be wound up by the Court," and "When the members are reduced to less than seven." The circumstances under which unregistered Companies are to be deemed unable to pay their debts, are also somewhat different, but it will be sufficient to refer the reader to the section for this difference. On the other hand a provision has been added in the case of unregistered Companies enabling those Companies to be wound up whenever they are "dissolved." (Sections 86 and 91 apply to these Companies.)

It will be remembered that the Act of 1862 is to apply to Companies formed and registered or

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registered only under The "Joint Stock Companies Acts" as defined in sect. 175, and such Companies are therefore to be wound up in the same way, and under the same circumstances as Companies formed and registered or registered only under the Act of 1862.

CHAPTER III.

AT WHOSE INSTANCE A COMPANY MAY BE
WOUND UP.

The 82nd section of the Act of 1862 provides, on this point, as follows :—

82. Any application to the Court for the winding up of a Company under this Act shall be by petition ; it may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories of the Company, or by all or any of the above parties, together or separately ; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

By whom
application
may be
made.

Apart from this section it would appear *prima facie* that any person who has any pecuniary interest in the affairs of a Company has a right to petition for winding it up, should circumstances arise to necessitate it ; and so far has the Court gone on this point that, prior to the Act of 1862, (and it is apprehended no variation in this respect is made by that Act), an order to wind up has been made upon the petition of past members who had transferred their shares on the allegation that they were still liable for certain debts of the Company, and were therefore contributories. (*Re The Times Fire Insurance Company*, 8 Jur. N. S. 111.)

Having regard to the above it would seem sufficient to mention in this place some of the classes of persons who have been allowed to petition. The particular cases, with references thereto, will be found in the Table of Cases.

The petitions of the following persons have been sustained.

1. An allottee of shares.
2. Assignee of debt.
3. The Company.
4. Creditors.
5. Executors who were not proprietors.
6. Provisional committee.
7. Shareholders.
8. Past shareholders.
9. Scrip holders upon undertaking to admit their liability as contributories, and to do all acts necessary to make themselves shareholders.
10. Bankrupt shareholders.

It has, however, been held by the Master of the Rolls that a Company required by the Act of 1862, sect. 209, to register, and not having been registered, has no power to petition as being disabled to sue by sect. 210. (*The Waterloo Life, &c., Assurance Office*, 1 N. R. 157.) Under sect. 180 a Company may be registered with the sole view of its being wound up.

It must also be borne in mind that the Court has refused to order a Company to be wound up on the petition of a creditor whose debt was

disputed. (*The Catholic Publishing Company, Limited*, 12 W. R. 538 ; see also *Re Hope Mutual Life Assurance Company*, 1 N. R. 542.) A holder of paid up shares cannot petition. (*Re Lancashire Brick and Tile Company, Limited*, 13 W. R. 569. See, as to petitioning *in formâ pauperis*, *Re The Irish Land Improvement Society, Ex parte Fry*, 1 Dr. & Sm. 318). And where the petitioner has been out of the jurisdiction he has been ordered to give security for costs. (*Re Royal Bank of Australia, Ex parte Latta*, 3 De Gex & S. 186.)

Where a Company is being wound up voluntarily it is provided by sect. 145 of the Act as follows :

The voluntary winding up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up. Saving of rights of creditors.

CHAPTER IV.

COMMENCEMENT OF PROCEEDINGS.

In what Manner.

Having thus ascertained by what Court and under what circumstances, and at whose instance, Companies are to be wound up, we proceed with the all important point to the practitioner, viz., the steps to be taken to attain that object, and if attained to carry it out.

The application to the Court is to be by petition.

Application
for winding
up to be
made by
petition.

82. Any application to the Court for the winding up of a Company under this Act shall be by petition; and it may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories of the Company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

A general form of the petition will be found in the Appendix of Forms, at the end of this Volume, but each petition must be adapted to the circumstances of the case, and should be settled by counsel who will see that all the circumstances authorising the Court to make the order are properly set out. The first of the general orders of

11th November, 1862, provides for the title of the petition as follows :—

1. Every petition for the winding up of any Company by the Court, or subject to the supervision of the Court, shall be intituled in the matter of “The Companies’ Act, 1862,” and of the Company to which such petition shall relate, describing the Company by its most usual style or firm.

The petition, when prepared, must be engrossed in duplicate on brief, and is to be marked at the left hand top corner of the front sheet, if intended to be heard before one of the Vice-Chancellors, “Lord Chancellor, Vice-Chancellor (Wood) ;” if intended to be heard before the Master of the Rolls “Master of the Rolls.” The petition is usually signed by the petitioner and attested by his solicitor, but there is no rule requiring this, and it would seem that the affidavit afterwards required as to the truth of the statements in the petition is sufficient proof that the petition is presented by the petitioner. When duly prepared and signed, the petition must be stamped with a £1 adhesive stamp, and with the duplicate presented in the first of the above mentioned cases to the Lord Chancellor’s Secretary, in Quality Court, Chancery Lane, or in the latter to the Secretary of the Master of the Rolls, in Rolls Yard. It is not now necessary before the petition is presented to search at both the offices above mentioned, to ascertain whether any prior petition to wind up the same Company has been presented at either office, as petitions may now be

Presentation
of petition.

presented concurrently before the Master of the Rolls and the Vice Chancellors. If the petition is presented at a time when the petition days are known to the Secretary, he will answer the petition (usually by the day following its presentation), for a certain petition day to be fixed by the solicitors, or if the petition days are unknown, as during the Vacations, the petition will be answered for the next petition day, under which circumstances the petition will be heard either on the first petition day of the ensuing sittings of the Court, or in the vacation on a special day to be fixed by the Judge upon application through his Chief Clerk. In the vacations directions will always be found at the chambers of the Vacation Judge when and where any application may be made to him. It is obvious to the practitioner that the petition if presented in Vacation time should be marked for the Vacation Judge.

Advertisement
of
petition.

Before the petition is heard it must be advertised in *The London Gazette* and in one or two newspapers, as provided by the following Rules of the order of 11th November, 1862 :—

2. Every petition shall be advertised seven clear days before the hearing as follows :—

(1). In the case of a Company whose registered office, or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the "London Gazette," and once at least in two London daily morning newspapers.

(2). In the case of any other Company, once in the

"London Gazette," and once at least in two local newspapers circulating in the district where such registered office, or principal, or last known principal place of business, as the case may be, of such Company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

The form of the advertisement will be found in the Appendix. The petition is also to be served in manner set out in the following rule :—

Service of
petition.

3. Every such petition shall, unless presented by the Company, be served at the registered office, if any, of the Company, and if no registered office, then at the principal or last known principal place of business, of the Company, if any such can be found, upon any member, officer, or servant of the Company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the Company as the Court may direct; and every petition for the winding up of a Company subject to the supervision of the Court, shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the Company.

Under this rule where the office of the Company was shut up, the Court has ordered service of the petition to be effected on the solicitor of the Company and one of the directors, a copy of the petition having been put into the letter box of the late office. (*Re London and Westminster Wine Company, Limited*, 12 W. R. 6.) In another case service was ordered to be made on any five directors. (*Re Unity General Assurance Company*, 11 W. R. 355.)

In the ordinary course, unless the petitioner is at hand, the advertisement and service of the peti-

Affidavit
verifying
petition.

tion will be the first matters taking attention, but at the same time and within four days of the presentation of the petition an affidavit verifying its contents must be filed. If the petitioner is at hand, he may make the affidavit immediately after the petition is presented. Rule 4 provides as follows:—

4. Every petition for the winding up of any Company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2 in the third schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the Company, by some director, secretary, or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

The form of the affidavit will be found in Appendix.

The affidavit is filed at the Record and Writ Clerks' Office, and an office copy is taken by the petitioner's solicitor. The same stamps are payable as in a Chancery suit.

Error.

Any error in the advertisement or in the filing of the affidavit may, unless remedied, invalidate the proceedings. Where the petition had not been advertised seven clear days, the Court allowed the petition to stand over to be re-advertised. (*Re The London and Westminster Wine Company Limited*, 12 W. R. 44.) Leave to amend the petition has been refused by V. C. Kindersley.

Re South Essex Gas Light Company, 6 W. R. 234.) Where an affidavit verifying the petition had been sworn before the petition was presented, the Master of the Rolls ordered the petition to be re-presented, the affidavit re-sworn and the order post dated. (*Re Western Benefit Building Society*, M. R., 33 L. J. Ch. 179.) Again, the Court has power to enlarge the four days allowed for filing the affidavit verifying the petition. (*Re Patent Screwed Boot and Shoe Company*, (32 Bea. 142, M. R.) On a petition to wind up voluntarily under the supervision of the Court, the Master of the Rolls granted an application that the affidavit in support which had not been filed within the four days after the petition was presented might be taken as sufficient *prima facie* evidence of the statements in the petition. (*Re The Kentish Royal Hotel Company*, 13 W. R. 448.)

In addition to the affidavit above mentioned, it is prudent in all cases to have distinct proof by affidavit of all the allegations in the petition in the ordinary way of verifying the statements in a petition. These affidavits should be settled by counsel and are sworn and filed, and an office copy taken by the petitioner's solicitor. In all cases an affidavit of service should be made, and that although the parties on whom the petition is served or some of them may appear at the hearing thereof. (*Re Tring, Reading and Basingstoke*

Affidavit of
service.

Railway Company, 3 De Gex & S. 10.) It is sufficient where service is made on a member to state in the affidavit of service that such person is a member. (*Re The Eastern Counties Railway Company, Ex parte Cooke*, 3 De Gex & S. 148.) Where the Company appeared at the hearing by their secretary it was held that no affidavit of service was necessary. (*Re The Great Western Railway of Bengal*, 3 De Gex & S. 101.)

Forms of the affidavits of service and of the insertion of the advertisements will be found in the Appendix.

Upon application, a copy of the petition is to be furnished to every creditor or contributory who may require one.

Rule 5. Every contributory or creditor of the Company shall be entitled to be furnished by the solicitor to the petitioner, with a copy of the petition within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy.

All the above preliminaries being complete, briefs of the petition and affidavits are delivered to counsel, and the petition comes on to be heard in Court or before the vacation Judge at the place he appoints, as the case may be.

Before dealing with the last step of this part of the process it may be useful to mention that should affidavits be filed in opposition to the petition, if necessary they should be answered, and the deponents may be cross-examined. For the latter purpose should the petition come on it may be

ordered to stand over upon the application of either party, and either a special examiner is appointed for the purpose or the cross-examination takes place before one of the examiners of the Court. For the practice on cross-examination the reader will refer to Chapter XV.

All these matters being attended to, the petition is heard by the Court. Hearing.

If it has been postponed indefinitely, application must be made by counsel to have it reinstated in the paper and notice thereof is given to the Secretary of the Lord Chancellor or Master of the Rolls and the Secretary of the Vice Chancellor.

By sections 86 and 146 it is provided as follows :

86. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just. Course to be pursued by Court on hearing petition.

146. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up. Power of Court to adopt proceedings of voluntary winding up.

In Chapter II. attention has been drawn to section 86 and to the full discretionary power vested in the Court to deal with the petition as it thinks just, but it may be well here to note the fact that the Court in the exercise of that power may either order the petition to stand over to ascertain

the result of any proceedings taken by the Company itself, may refer the matter to Chambers on an inquiry whether the circumstances exist authorising the Court to order the winding up of the Company, or may direct a meeting of the creditors or contributories of the Company to be held under section 91 for the purpose of ascertaining their wishes.

Cases in which the Court has exercised its discretion will be found in the Table of Cases.

As the two applications for winding up and appointment of a liquidator, generally in urgent cases come together, it may be well to draw attention to the power of the Court, under sect. 85, at any time after the presentation of the petition, to appoint a provisional official liquidator with or without notice to any person. The appointment of such provisional liquidator will be treated of in Chapter X, but is here mentioned to draw the attention of the practitioner thereto.

The order for winding up, if made, is drawn up by the Registrar on being bespoken by the petitioner's solicitor, and is passed and entered in the usual way. The stamp is £1. (See Rule 71 and Schedule 2 to same.) The form of the order will be found in Appendix.

CHAPTER V.

EFFECT OF PETITION OR ORDER.

When a Company gets irretrievably into difficulties, a petition to wind up is presented not only with the view of obtaining an order for that purpose, but usually as quickly as possible to prevent creditors, who might be proceeding for the recovery of their debts, from obtaining an undue advantage over the other creditors, and inasmuch as the Act has declared by sect. 84 that the winding up shall be deemed to commence at the time of the presentation of the petition, it has further given authority to the Court immediately to stop by injunction the further prosecution of the action or proceeding. In the case of a Company formed and registered under the Act of 1862, or formed and registered under the Joint Stock Companies Acts, it is provided, by sect. 85, as follows:—

85. The Court may, at any time after the presentation of a petition for winding up a Company under this Act, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any action, suit, or proceeding against the Company, upon such terms as the Court thinks fit; the Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Court may grant injunction.

When the order for winding up is made the Act itself provides that no further proceedings shall be taken.

Actions and suits to be stayed after order for winding up.

Sect. 87. When an order has been made for winding up a Company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court, and subject to such terms as the Court may impose.

In the case of a Company registered only under the Act of 1862, or the Joint Stock Companies Acts, it is provided as follows :—

Sect. 197. The Court may, at any time after the presentation of a petition for winding up a Company registered in pursuance of this part of the Act (part 7), and before making an order for winding up the Company, upon the application by motion of any creditor of the Company, restrain any further proceedings in any action, suit, or legal proceeding against any contributory of the Company, as well as against the Company, as hereinbefore provided, upon such terms as the Court thinks fit.

198. Where an order has been made for winding up a Company registered in pursuance of this part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

In the case of an unregistered Company the following provisions are made.

Power of Court to restrain further proceedings.

201. The Court may, at any time after the presentation of a petition for winding up an unregistered Company, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings in any action, suit, or proceeding against any contributory of the Company, or against the Company

as hereinbefore provided, upon such terms as the Court thinks fit.

202. Where an order has been made for winding up an unregistered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

Effect of
order for
winding up
Company

The difference between the provisions for restraining actions in the case of a Company formed and registered under the Act of 1862, or the Joint Stock Companies Acts, and in the case of Companies registered only under the Act of 1862, or the Joint Stock Companies Acts, and of an unregistered Company, will be noticed. In the first case, proceedings against the Company are to be stayed; in the other cases, proceedings against any contributory of the Company or against the Company. Again, the order is to be made in the first case at the instance of a creditor or contributory, in the others at the instance of a creditor only. It may be important to notice this difference, and, in the case of Companies merely registered and of an unregistered Company, immediately apply for an injunction on the presentation of the petition, at the instance of a creditor. It will be observed that after an order had been made, no action, suit or other proceeding is to be proceeded with *except* with leave of the Court.

This opens at once the question how far, and in

what cases the Court will give leave. It is apprehended that in no case would such leave be granted unless it is shewn to the Court that the person prosecuting the action is entitled to payment of his claim in full in priority to the other creditors, as if he be a landlord suing for rent. In a case of that kind leave has been given by the Master of the Rolls and the Lords Justices to the landlord to proceed with his distress. (*The Exhall Mining Company*, 12 W. R. 727.) The Court, in granting leave, may impose such terms as it thinks fit. In *Thomas v. Wills* (L. J. 1864, 211), the Court of Common Pleas stayed an action commenced by a creditor of a Company against a contributory after the order to wind up.

Other instances where proceedings have been stayed will be found in the Table of Cases.

The next section of the Act of 1862, to which attention is to be drawn in this Chapter, is :—

Petition to be
lis pendens. 114. Any petition for winding up a Company by the Court under this Act shall constitute a *lis pendens* within the terms of the Act passed in the session holden in the second and third years of the reign of Her present Majesty, chapter 11, and intituled *An Act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy*, provided the same is duly registered in manner required by such Act concerning suits in equity.

To give effect to this provision as a charge upon the lands of the contributory, the *lis pendens* must be registered at the Common Pleas Office for the registration of judgments.

In most cases, to carry out this provision involves a large expenditure, but notwithstanding that, its effect may be extremely useful as giving an opportunity for the official liquidator to obtain information of any contributory attempting to dispose of his property before payment of his calls. The course has been adopted in *Re The North-umberland and Durham District Bank and The Leeds Banking Company*. We now come to some provisions introduced to assimilate the law of Companies to that of bankruptcy in reference to the property of bankrupt estates. By the sections next mentioned it is provided as follows:—

Sect. 153 Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the Company, and every transfer of shares, or alteration in the status of the members of the Company made between the commencement of the winding up and the order for winding up, shall, unless the Court otherwise orders, be void.

Dispositions after the commencement of the winding up avoided.

153. Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the Company after the commencement of the winding up shall be void to all intents.

Certain attachments, sequestrations, and executions to be void

154. Any such conveyance, mortgage, delivery of goods, payment, execution, or other Act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have

Fraudulent preference.

been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a Company shall in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the Company shall in the case of a voluntary winding up, be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

It will be seen that these provisions are most important in protecting the property of the Company from being dissipated or taken by preferential creditors. For the law of bankruptcy, as it affects the provisions of section 164, the writer would refer the reader to the works published on that law, but the pith of it is contained in the following note to the section now under consideration in Mr. Wordsworth's edition of the Act of 1862: "If a bankrupt, knowing himself to be on the eve of bankruptcy, voluntarily gives or assigns goods, money or other property to a creditor, with a view of giving him a preference over other creditors, such transfer or assignment is void as against the other creditors; and upon the bankruptcy of the debtor, his assignees may recover the property from the creditors thus preferred on the ground that it is a fraud upon the bankrupt laws. (*Crosby v. Crouch*, 11

East, 256, 2 Camp. 166. *Alderson v. Temple*, 4 Burr. 2235)."

On comparing the sections first mentioned in ^{Reut.} this Chapter with section 163, it would appear that a distress put in by the landlord after the presentation of the petition, which upon an order being made is the time of the commencement of the proceedings, would be altogether void, but from the judgment in *The Great Ship Company Limited, Ex parte Parry* (12 W. R. 139), and in *The Exhall Mining Company, Limited*, it would appear that section 163, refers to executions, &c., put in after the order to wind up where the leave of the Court is not given to proceed with the same. In *Re The Great Ship Company, Ex parte Parry*, the execution was levied some days before the petition to wind up was presented, and it was held by the Lords Justices that the execution creditor was entitled to proceed with it notwithstanding the order.

In concluding this Chapter, attention must be ^{Parties to winding up.} drawn to the following portion of section 82,—
 "Every order which may be made on any such petition (for winding up), shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory." On whosoever petition therefore the order to wind up is made, both the

classes above mentioned become parties to the proceedings and are bound thereby.

The provisions of section 84, viz., "A winding up by the Court shall be deemed to commence at the time of the presentation of the petition for winding up," must be remembered in questions arising on the preceding sections.

CHAPTER VI.

PROCEEDINGS UPON THE ORDER TO WIND UP.

By sects. 84 and 85, and rule 6, it is provided as follows:—

Sect. 84. A winding up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commence-
ment of
winding up
by Court.

88. When an order has been made for winding up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the registrar of joint stock companies, who shall make a minute thereof in his books relating to the Company.

Copy of
order to be
forwarded to
registrar.

Rule 6. Every order for the winding up of a Company by the Court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the "London Gazette," and shall be served upon such persons (if any) and in such manner as the Court may direct.

The first of the above mentioned sections is important on the matters treated of in the last Chapter and on all questions on the subsequent winding up of a Company.

Under section 88, a copy of the order is to be forwarded to the Registrar of Joint Stock Companies.

Rule 6 requires the order to be advertised in the London Gazette within twelve days after the date thereof, but where the twelve days had been allowed to elapse in error the Court has per-

mitted the order to be post dated to enable it to be properly advertised.

The form of the advertisement will be found in Appendix.

The Court has power to direct that meetings of the creditors or contributories of the Company shall be called so as to ascertain their wishes on any particular matter.

Court may have regard to wishes of creditors or contributories.

Sect. 91. The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Meetings of Creditors or Contributories.

Rule 45. When the Judge shall direct a meeting of the creditors or contributories of the Company to be summoned under the 91st or 149th section of the said Act, the official liquidator shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the Judge desires to ascertain the wishes of the creditors or contributories; or, if the Judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *London Gazette*.

46. The votes of the creditors or contributories of the Company at any meeting summoned by the direction of the Judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor

PROCEEDINGS UPON THE ORDER TO WIND UP. 89

of the Company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the Company.

47. The direction of the Judge for any meeting of creditors or contributories under the 91st or 149th section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the Judge.

The form of notice of the meeting will be found in Appendix, and of the appointment of a proxy to vote at the meeting. Also memorandum of appointment of a chairman, and of his report.

CHAPTER VII.

GENERAL PROCEEDINGS IN CHAMBERS.

We now come to the most important proceedings in the winding up, namely, those which take place in the chambers of the Judge to whose Court the matter is attached. Each step of these proceedings will be treated of in a distinct Chapter as we proceed, but as it is essential to the practitioner before he enters upon his duties that he should see clearly the path he has to tread, we propose to take a general view of these proceedings and of the provisions of the Act and rules which will require attention, and then to treat of each proceeding separately and more fully.

Immediately after an order for winding up of a Company is made, it is the duty of the solicitor having the conduct of the order to draw it up as mentioned in Chapter IV., send a copy to the Registrar of Joint Stock Companies, and advertise it within twelve days in the *London Gazette*.

At the same time he will carry the order into chambers and obtain an appointment to proceed thereon (Chap. VIII.) Upon the return of the summons for that purpose a day must be named for the appointment of an official liquidator. Should a

provisional official liquidator have been appointed at the hearing of the petition the solicitor will complete his security and obtain directions as to the payment by such provisional official liquidator into the bank of any money received by him, the opening of an account, and generally upon any matter of urgency in the course of dealing with the assets of the Company which requires the sanction of the Judge.

Upon the appointment of an official liquidator, he will with the sanction of the Court appoint his solicitor, and the chief clerk will, on application, appoint a day for the creditors to send notice of their claims to the official liquidator and another day to proceed upon such as may be disputed. The official liquidator will prepare a list of the contributories and carry it into chambers. A day has then to be appointed to settle it, and the result will be certified by the chief clerk. When settled, a day will be appointed to make a call upon the contributories settled upon the list. The assets have to be collected by the official liquidator. All such as he can collect without the aid of the Court, and without involving expense or depreciating the assets of the Company, he is at liberty to get in, but where property has to be sold, debts or calls compromised, actions defended, the business of the Company carried on, or the other matters mentioned in section 95 of the Act of 1862 done by the official liquidator, the leave

of the Court must be obtained on summons. Any order may, however, be made by the Judge giving such general powers to the official liquidator as the Judge shall think fit. In cases of unregistered Companies, it may be necessary to obtain an order vesting the property of the Company in the official liquidator. All sales of property have to be made under the direction of the Court, in the same manner as sales in an ordinary Chancery suit.

When the assets are realized and got in, and the calls paid, they will from time to time be divided amongst the creditors, and should the creditors eventually be paid in full and a surplus remain such surplus will have to be divided amongst the contributories, their rights *inter se* being first settled.

All affidavits have to be filed at the Record and Writ Clerks' Office, but no one is obliged to take office copies except the official liquidator, who is bound to do so, and produce them whenever required.

All orders are to be drawn up in chambers, except when specially directed to be drawn up by the registrar, and are to be entered in the same way as other chamber orders. Advertisements for any of the purposes above mentioned are to be issued unless otherwise directed by the Court, and one most important point must be remembered by the practitioner, namely, that the general

practice of the Court of Chancery, except where inconsistent with the Act of 1862 or the rules thereunder, is to apply to all proceedings for winding up the Company. This applies to the certificate of the chief clerk, taking the opinion of the Judge in chambers on any question arising during the winding up, or adjournments into Court as well as other proceedings. The Judge has the same power to do any act in chambers as he has in Court.

The Judge may upon any question direct a meeting of the creditors or contributories to be held to ascertain their wishes thereon.

The time to take the opinion of the Judge upon any question raised before the chief clerk will be found in Chapter XI., and the time to appeal is three weeks from the date of the appealed order being pronounced.

The rights of creditors or contributories to attend the proceedings or otherwise in the course of the winding up will be treated of in their place in the ensuing Chapters.

Having thus given a general description of the nature of the proceedings in the ordinary course of winding up a Company, we will proceed to deal with each step *separately*.

CHAPTER VIII.

PROCEEDINGS IN CHAMBERS.

FIRST STEPS UNDER THE ORDER.

By the orders of the 11th November, 1862, it is provided as follows :—

Order to be
carried into
chambers,

7. A copy of every order for winding up a Company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the Judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding up may leave the same and the Judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding up of the Company, and be served upon all the parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the Judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

The copy of the order here mentioned must be certified as follows :—

“ We hereby certify that this copy order is a

true copy of the order of which it purports to be a copy as passed and entered.

“A. & B., petitioner's solicitors.”

The time, it will be observed, for the party having the conduct of the matter to leave the order in the chambers of the Judge, is ten days after it has been passed and entered; after that time any person interested may leave the same; for which purpose he will obtain an office copy of the order and certify a copy thereof.

A summons is then taken out according to Form in Appendix, and served upon any persons who may have appeared upon the petition. This should be done in all cases though the parties may not be entitled to attend the proceedings except at their own expence, as, until an official liquidator is appointed, the general body of creditors and contributories who have become parties to the winding up by reason of sect. 82 are unrepresented except by those who have appeared upon the petition (other than the petitioner) by reason of the petition having been served on them by express direction in the act or under the order of the Court.

On the return of the summons, the chief clerk will, if he thinks fit, direct a meeting to be held for the purpose of appointing an official liquidator of the Company, and will also direct advertisements to be issued for the creditors to send particulars of their debts to the official liquidator and

name a day on which such claims as may be disputed are to be proceeded upon.

The course to be pursued on the appointment of an official liquidator will be found in Chapter X., and that on considering claims in Chapter XIII., but it may here be observed, as will be hereafter mentioned, that the chief clerk has power to appoint an official liquidator without previous advertisement or notice to any party, and as in *The Leeds Banking Company*, Vice Chancellor Kindersley, the chief clerk may appoint an official liquidator at the meeting held to consider the winding up order.

On the summons to proceed on the winding up order, directions may be given by the chief clerk on any matter requiring immediate attention in the collection or protection of the assets of the Company.

CHAPTER. IX.

ATTENDANCE IN CHAMBERS, INSPECTION OF BOOKS
AND PROCEEDINGS.

CREDITORS' REPRESENTATIVE, ETC.

Immediately the order to wind up a Company Attendance. is carried into chambers the question arises as to the parties entitled to attend the proceedings, and on this point it is provided as follows :—

Rule 60. Every person, for the time being, on the list of contributories of the Company, left at the chambers of the Judge by the official liquidator, and every person having a debt or claim against the Company, allowed by the Judge, shall be at liberty, at his own expense, to attend the proceedings before the Judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the Company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

61. The Judge may from time to time appoint any one or more of the contributories, or creditors, as he thinks fit, to represent before him, at the expense of the Company, all or any class of the contributories or creditors, upon any question as to compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding up of the Company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

62. No contributory or creditor shall be entitled to

attend any proceedings at the chambers of the Judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

See also rule 7, page 44.

From the wording of the first of the above rules, it would seem as if the question of the attendance of parties did not arise till after the lists of contributories and creditors were settled; but as, by rule 7, it may be raised immediately the order for winding up is carried into chambers, this would appear the proper place to deal with it, particularly having regard to section 74, which provides as follows:

Meaning of contributory.

74. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act, in the event of the same being wound up: It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

It is also submitted that creditors are interested in the settlement of the list of contributories, and it therefore becomes at once an important question who is to attend.

Again, where no creditors' representative is appointed, it seems reasonable that a large creditor might, if he thought fit, have liberty to attend before his claim is formally allowed, if it is admitted to be due.

Rule 60 gives liberty to any person settled on

the list of contributories and any creditor whose claim has been allowed, to attend the proceedings at his own expence, and to receive notice of all such proceedings as he may by written request desire to have notice of, with the provision as to costs mentioned in the rule.

If a contributory or creditor therefore wish to attend, a summons (unless it is dispensed with on special application to the chief clerk) may be issued in the Form set out in Appendix. Summons.

Should leave be given, an appearance must be entered in the appearance book, as provided in rule 62 (see Form) before the party to whom leave has been given can attend. In practice, entering an appearance applies to all alleged contributories or creditors who attend the settlement of the list of contributories in their own cases, or on the list of claims, and is useful as giving to the official liquidator and his solicitor the names of all the solicitors engaged in the matter, and to whom notice of the appointments in their clients' cases and of the calls, &c., are sent.

In *The Imperial Salt and Alkali Company, Ex parte Slatter's Executors* (21 Law J., N. S., Ch. 224, 5 De Gex & Sm. 34), it was decided that contributories had a right to be present, on fixing the reserve biddings on the sale of property belonging to the Company, but this must now be taken subject to the provisions of rule 60.

The position of the petitioner upon the in-

Petitioner.

quiries in Chambers, meets the practitioner at the outset, and it would, *primâ facie*, appear that, as having the carriage of the order, he would be entitled to attend the proceedings, but not only is he now considered, after the appointment of an official liquidator, as one of the general body of creditors or contributories amongst whom he may rank, but it was decided before the Act of 1862 that the Master had authority at any time, after the commencement of proceedings in his office, to discharge the petitioner from all further attendance in the matter. (*Re The London and Manchester Direct Independent Railway Company, Ex parte Barber*, 18 Law J. (N. S.) Ch. 245, 1 De Gex & S. 726.)

Creditors' representative and his duties.

The provision for appointing a creditor's representative was originally introduced into the proceedings for winding up a Company by the Act of Parliament, 20 & 21 Vict. cap. 78 (August 1857), which Act was passed at a time when only a contributory could petition the Court of Chancery for winding up a Company *not* registered under the Act of 1856, cap. 47, and was made to amend the winding up Acts of 1848 and 1849. By such Act of 1857 it was provided that after advertisements for the appointment of a creditor's representative no action against the Company should be commenced or proceeded with except as therein mentioned, nor should execution be issued or proceeded with against the person or property of any

member of the Company without the leave of the Court. And, by the first section of that Act, it was provided that, at the meeting for the appointment of such representative, "it shall be lawful for two-thirds in value of the creditors present at such meeting, whose debts shall have been proved before the said Judge or Master, or who shall previously to such meeting have lodged an affidavit of their debt before him, and who would be entitled to vote in the choice of assignees under a bankruptcy by themselves or by some person authorized by any letter or writing under the hand of such creditor, and which letter or writing shall require no stamp duty to be paid thereon, to choose some person or persons to represent all the creditors of any such Company accordingly."

Under the Joint Stock Companies Act, 1856, in cases within the jurisdiction of the Court of Bankruptcy, it was enacted that it should be lawful in cases where the winding up took place at the suit of a creditor for the major part in value of the creditors assembled at a meeting to be held for the purpose, and in cases where the winding up took place at the suit of a contributory for the major part in value of the contributories assembled at a meeting to be held for the purpose to appoint an official liquidator to act concurrently with the official assignee who had been appointed official liquidator by the Court.

The Act of 1862 contains no provision what-

ever for the appointment of a creditors' representative, and the only provision in that behalf is contained in rule 61, above quoted.

By that rule, however, it will be seen that the Judge may appoint one or more of the contributories or creditors as he thinks fit to represent before him, at the expense of the Company, all *or any class* of the contributories or creditors on the questions therein mentioned.

In the absence of any provisions on the subject it is presumed that the Judge, in acting on the power thus vested in him, will either ascertain the wishes of the creditors or contributories, under sect. 91, or follow by analogy one of the two provisions above set out; the debts of creditors or number of shares of contributories, and the nominations of the respective parties proposed, being proved before him as under the Act of 1857 first above quoted. The exercise of the power is, however, quite discretionary in the Judge.

The words "or any class of the contributories or creditors" will be observed in the rule now under consideration; and, inasmuch as in many cases the interests of the various classes of the contributories or creditors may be antagonistic in the final winding up of the Company, (as, for instance, one class of contributories claiming to be indemnified by another, or one class of creditors claiming priority to another), such a provision may be of the utmost importance.

Having thus drawn attention to the provision for the appointment of a creditors' representative, it remains to be seen what are his duties when appointed.

In *The Mexican and South American Mining Company* (6 W. R. 561) the Master of the Rolls in the first instance, and subsequently the Lords Justices, decided that the creditors' representative was entitled to be present when the Master settled the list of contributories, Lord Justice Turner observing that creditors had an interest two ways in settling the list, first, to keep parties off the list, and secondly to place them on.

In *The National Assurance and Investment Association, Ex parte Cotterill* (32 L. J. Ch. 66), it was further decided that on an appeal by the official manager against an order removing a name from the list of contributories, the creditors' representative was not entitled to be heard, and that he ought to concur in the appeal unless the creditors are not substantially represented by the official manager, and that if he appeared separately he would not be entitled to his costs.

Again, in *Re the Era Assurance Company* (11 W. R. 320) Vice Chancellor Wood allowed the costs of the creditors' representative on attending to oppose a claim made against the Company, though such opposition was unsuccessful; but he refused to certify for counsel, and on appeal against so much of the order as refused the certificate

the Lord Justice Turner, on the appeal being dismissed without costs, made the following observations: "It seems to me right as a general rule (although it is of course impossible to lay down a general rule applicable to all cases and all circumstances), that where the creditors or contributories have common and equal interests the creditors' representative ought not to appear on the application, but should leave the case in the hands of the official manager. Where any question arises between the creditors and the contributories then the application is properly attended by the creditors' representative and by the official manager, one representing the creditors and the other the contributories." And further on in his judgment he said, "It has been already decided that upon settling the list of contributories the creditors' representative is entitled to attend, but there is a great distinction between settling the list of contributories and resisting a claim for debt. On settling the list of contributories the official manager has a very limited interest, as all he has to do is to get on the list of contributories the persons who are liable to contribute amongst themselves; but the creditors' representative has a very great interest, as by getting a particular person put on the list he makes that person liable to pay the debts due to the creditors. There is, therefore, a great distinction between settling the list of contributories and resisting a claim of debt. (See 32 L. J., Ch. 216.)

From these decisions it appears that the creditors' representative is entitled to attend the settling of the list of contributories in chambers but not in Court, unless the interests of the creditors are not substantially represented by the official liquidator. He is further entitled to attend all proceedings in chambers upon the claims of the creditors, and judging from analogy to the last cited case he is entitled to appear on all applications connected with the property of the Company and the realization thereof, and on all compromises with the creditors or contributories, as in all these last mentioned matters the creditors' interests are as great as in settling the list of contributories.

It may be that on the appointment of the creditors' or contributories' representative by the Judge under rule 61, leave to appear might be limited to certain special matters.

A form of the order appointing a creditors' representative will be found in Appendix.

The practice as to inspection of the books of the Company, and the file of proceedings in the winding up is governed by the following section and rules :—

Sect. 156. Where an order has been made for winding up a Company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court but not further or otherwise.

Inspection
of books.

Rule 58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any Company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the Judge may from time to time direct. Every contributory of the Company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three-halfpence per folio of seventy-two words; and such file shall be produced in Court, or before the Judge, and otherwise, as occasion may require.

It will be observed that rule 58 refers alone to the file of proceedings in the winding up in the possession of the official liquidator, and therefore any application for the inspection of the books and papers of the Company must be made on special application by summons, and according to the general practice of the Court the official liquidator may, in any disputed case, be called on to make an affidavit of books and documents in his possession, and an order may be made for him to do so and for the inspection of the books by the applicants as in a suit. See *post*, Chapter on Evidence.

CHAPTER X.

PROVISIONAL AND OFFICIAL LIQUIDATOR.

PART I. — PROVISIONAL OFFICIAL LIQUIDATOR.

By sect. 85 of the Act it is provided as follows:—

“The Court may also at any time after the presentation of such petition (the petition to wind up), and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.”

By rule 15 it is provided:—

“Where it is desired to appoint provisionally an official liquidator, an application for that purpose may at any time after the presentation of the petition for winding up the Company be made by summons without advertisement or notice to any person, unless the Judge shall otherwise direct, and such provisional liquidator may, if the Judge shall think fit, be appointed without security.”

And by rule 59 as follows:—

“All the above rules relating to official liquidators shall, so far as the same are applicable and subject to the direction of the Judge in each case, apply to provisional liquidators.”

For the rules referred to in the last mentioned rule reference must be made to Part 2 of this Chapter.

Under the first of the above mentioned rules a provisional liquidator was appointed on the hearing of the petition, and one chosen, out of two nominated in the matter of *The Leeds Banking Company*, Vice Chancellor Kindersley (October, 1864); and on that occasion by consent without security.

In *The Commercial Discount Company* (11 W. R. 353) the Master of the Rolls refused to appoint a provisional official liquidator, except by consent.

In *Re The Rockall Fishing, &c., Company* (11 W. R. 84) the Vice Chancellor Wood, on an unopposed petition, appointed by consent an official liquidator at the hearing of the petition to wind up, subject, however, to any application to alter the appointment at the proper time.

A form of the summons for the appointment of a provisional official liquidator will be found in the Appendix.

The order, being made in chambers, is drawn up there, and entered as other common chamber orders, unless otherwise directed. See Form of Order, Appendix.

PART II.—OFFICIAL LIQUIDATOR.

The following sections and rules apply to official liquidators:—

Sect. 92. For the purpose of conducting the proceedings in winding up a Company and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the Court having jurisdiction may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

Appointment
of official
liquidator.

93. Any official liquidator may resign or be removed by the Court on due cause shown: And any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court: There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

Resigna-
tions, remo-
vals, filling
up vacancies,
and compen-
sation.

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular Company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding up of the Company as may be imposed by the Court.

Style and
duties of
official liqui-
dator.

152. Where an order has been made for the winding up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may in such last mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without

Appointment
in certain
cases of
voluntary
liquidators
to office of
official liqui-
dators.

the addition of any other persons, to be official liquidators.

Powers of
official liquidator.

95. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

- (1). To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company :
- (2). To carry on the business of the Company, so far as may be necessary for the beneficial winding up of the same :
- (3). To sell the real and personal and heritable and moveable property, effects, and things in action of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels :
- (4). To do all Acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal :
- (5). To prove, rank, claim, and draw a dividend in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors :
- (6). To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the Company, also to raise upon the security of the assets of the Company from time to time any requisite sum or sums of money ; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such Company in the course of carrying on the business thereof.
- (7). To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other Act that may be necessary for obtaining payment of any monies due

from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself:

- (8) To do and execute all such other things as may be necessary for winding up the affairs of the Company and distributing its assets.

96 The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion of
official liquidator

97. The official liquidator may, with the sanction of the Court, appoint a solicitor or law agent to assist him in the performance of his duties.

Appointment
of solicitor to
official liquidator.

103. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Power of
Court to
order pay-
ment into
bank.

104. All monies, bills, notes, and other securities paid and delivered into the bank of England or any branch thereof in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.

Regulation
of account
with Court.

111. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Dissolution
of Company.

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Registrar to
make minute
of dissolution
of Company.

Rule 8. The Judge may appoint a person to the office of official liquidator, without previous advertisement, or notice

Rules.

to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties, in such sum as the Judge may approve; and the Judge may, if he shall think fit, accept the security of any Guarantee Society established by charter or Act of Parliament in England in lieu of the security of such sureties as aforesaid, or of any of them.

11. The official liquidator shall be appointed by order; and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the Judge's chambers, and shall direct that all moneys to be received shall be paid into the Bank of England, immediately after the receipt thereof to the account of the official liquidator of the Company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause subject to giving security.

13. The official liquidator shall on each occasion of passing his account, and also whensoever the Judge may so require, satisfy the Judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed. (See rule 56.)

14. Every appointment of an official liquidator shall be advertised, in such manner as the Judge shall direct, immediately after he has been appointed, and has given security.

16. In case of the death, removal or resignation of an

official liquidator, another shall be appointed in his room, *Rules.* in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the Company; and shall provide and keep such books of account as shall be necessary, or as the Judge may direct, for the purposes aforesaid, and for showing the debts and credits of the Company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these rules.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the Judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the Judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the Judge shall require; nevertheless, the Judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

19. The accounts of the official liquidator shall be left at the Judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the Judge, and such accounts shall, upon notice to such parties (if any) as the Judge shall direct, be passed and verified in the same manner as receivers' accounts.

36. If any official liquidator shall not pay all moneys received by him into the Bank of England to the account of the official liquidator of the Company within seven days next after the receipt thereof, unless the Judge shall have otherwise directed, such official liquidator shall be charged

in his account with 10s. for every 100l., and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the Judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

37. All bills, notes, and other securities payable to the Company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

38. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the Company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 in the 3rd Schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in Form No 41 in the 3rd Schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the Bank of England an affidavit of the official liquidator, to the purport or effect set forth in Form

No. 43 in the 3rd Schedule hereto, shall be sufficient evidence of the nonpayment thereof.

41. All moneys, bills, notes, and other securities paid and delivered into the Bank of England, shall be placed to the credit of the account of the official liquidator of the Company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of Securities, and Payment Out and Investment of Moneys.

42. All bills, notes, and other securities delivered into the Bank of England, shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the Judge: and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the Judge.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of the winding up, may be invested in the purchase of Bank 3l. per Cent. Annuities, Reduced 3l. per Cent. Annuities, New 3l. per Cent. Annuities, or New 2l. 10s. per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the Judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the Judge, or under an order to be made by the Judge.

44. All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the Bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exche-

quer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England, to the credit of the account of the official liquidator of the Company.

Direction or Sanction of the Judge.

48. The sanction of the Judge to the drawing, accepting, making, and endorsing of any bill of exchange or promissory note by any official liquidator, shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the Judge.

50. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order shall be drawn up thereon, unless the Judge shall otherwise direct.

56. Certificates on passing an official liquidator's account may be approved and signed by the Judge without delay, and upon being so signed shall be filed and forthwith acted on.

With the exception of the rules as to the official liquidator's duties on settling the list of contributories, on claims, on compromising debts or settling a scheme for general liquidation, the above are all the sections of the Act of 1862, and the rules made thereon, relating to the appointment and duties of the official liquidators.

Commencing with section 92 we find an official liquidator is to be appointed by the Court for the purpose of conducting the proceedings, and to assist the Court therein. The course to be pur-

sued for this object is prescribed by rules 8 and 9. ^{Advertisement.} By rule 8 the Court may appoint an official liquidator without advertisement or notice to any party, but this will only be done as in *The Leeds Banking Company* (in chambers), where the chief clerk or Judge is satisfied that the person nominated is supported by the majority in number and value of the creditors, and the majority in number and shares of the contributories, and that the person proposed is a fit and proper person. This appointment may be made on the summons to consider the order to wind up; but should the chief clerk determine to fix a time and place for the appointment, and give directions to that effect advertisements are to be inserted as pointed out in rule 9. A form of the advertisement will be found in Appendix.

Preparatory to the meeting nomination papers should be signed by the creditors and contributories in the form in the Appendix, and an affidavit, as to the fitness of the party proposed, should be made by some competent person. In *The State Fire Office* (6 L. T. N. S. 40), Vice Chancellor Wood condemned the practice of sending circulars to shareholders canvassing for the appointment, and in that particular case set aside the appointment made by the chief clerk. The practice is also disapproved of at the Rolls.

At the meeting for the appointment of the official liquidator, the papers containing the adver-

tisement must be produced, and the chief clerk then proceeds with the appointment.

Persons to
be appointed.

With regard to the person to be appointed the Lords Justices, in *Re The Northumberland and Durham District Bank* (2 De Gex & J. 508), expressed an opinion that the official liquidator should not be a shareholder but a disinterested person, and in *The Leeds Banking Company*, before Vice Chancellor Kindersley in chambers, the Vice Chancellor refused to appoint a contributory and a creditor as joint provisional liquidators with the Public Accountant, who was afterwards appointed sole official liquidator, intimating at the same time that he should not have sanctioned the appointment of three liquidators in *The Northumberland Bank*, but that he found them in office under the voluntary winding up of that Company which preceded the winding up by the Court. The Lords Justices have also decided that they will not interfere with the discretion of a Judge in appointing an official liquidator. (*Re Agriculturist Cattle Company, Ex parte Lowe*, 9 W. R. 910.)

The inclination of the Court, under the circumstances above mentioned, is to appoint only one official liquidator, but, should a case arise where two or more are appointed, the Court is then empowered to declare whether any act required or authorized to be done by the official liquidator is to be done by all or any one or more of such

persons. An order for the purpose will be found in Appendix.

The Court is further to determine what ^{Security.} security shall be given by the person appointed. The amount of security is not fixed as in the case of a receiver in a suit in the Court of Chancery, but according to the amount which it is probable the official liquidator will be likely to have in hand at one time. In *The Leeds Banking Company*, where the assets were estimated at near one million of pounds, the amount of the security was fixed at 20,000*l.*, and was entered into by the official liquidator with two sureties in 10,000*l.* each—the official liquidator in the whole amount. As a reason for this it is to be borne in mind that the official liquidator is, under rule 11, to pay all monies he receives into the Bank of England; and, should he retain in his hand any larger sum than 100*l.* for more than seven days, he is chargeable with interest at 10 per cent. and may have his salary or remuneration disallowed. All calls, too, are to be paid into the Bank of England direct, except in special cases directed by the Court. All bills, notes and other securities payable to the Company are also to be deposited in the Bank of England. On reference to rule 10 it will be seen that the Judge may accept the security of any Guarantee Society.

The official liquidator is appointed by order, and, unless he shall have given security, a time is

to be fixed for him to do so, and the order is also to fix the times or periods at which the official liquidator is to leave his accounts at chambers, and is to direct payment of all moneys into the Bank of England to the account of the official liquidator of the Company. See rule 11. The order appointing the official liquidator directs the official liquidator to give security to the satisfaction of the Judge. A form of the order will be found in Appendix.

A form of the recognizance of the official liquidator and sureties will be found in Appendix, and a form of the affidavit by the sureties. The recognizance is signed and acknowledged by the official liquidator and his sureties before a Commissioner to administer oaths in Chancery. It is engrossed on parchment with a 35s. stamp, and must be signed as approved by the chief clerk. It is subsequently enrolled in the Enrolment Office. The form of the certificate of the chief clerk that security has been given under rule 12 will be found in Appendix.

Certificate. This certificate is prepared by the chief clerk and settled by him with the solicitor; it is then engrossed on a 5s. stamp, and when signed by the Judge, is filed under Consolidated Order, No. 35, rule 52. It becomes binding at the expiration of eight days after being filed.

**Subsequent
proceedings**

By rule 14, the appointment of the official liqui-

dator is to be advertised as the Court may direct. For form of advertisement, see Appendix.

By rule 11, an account of the official liquidator of the Company is to be opened at the Bank of England, and an office copy of the order appointing the official liquidator is to be lodged at the Bank. See form of direction to open account in Appendix. Into that account all moneys are to be paid by the official liquidator, and by any other person when directed by an order; and all bills, notes, and other securities, are to be deposited there by the official liquidator for presentation, as and where necessary. See sections 103 and 104 and rules 37 and 41. When any other person than the official liquidator is to pay any money into his account, a notice is to be served on such person as in Appendix, and a certificate is to be furnished to the cashier of the bank. See rule 38. When any money is paid in, the cashier of the bank will give a receipt in Form in Appendix. By rule 42, all bills, notes, and other securities are to be delivered out on request signed by the official liquidator, and countersigned by the chief clerk, and moneys are to be paid out, upon checks or orders signed by the official liquidator and countersigned by the chief clerk. See section 104 and rule 42.

Any money standing to the account of the official liquidator may be invested as provided by rule 43. See form of request in Appendix. All

dividends and interest on investments are to be received by the Bank of England and placed to the credit of the account. Rule 44.

Books, &c.

We then find in rule 17, that the official liquidator is to make up, continue, complete, and rectify the books and accounts of the Company, and is to keep such books as may be necessary, or as directed by the Judge, for the purpose of shewing the debts and credits of the Company, and a separate ledger containing accounts with each of the contributories, which accounts are to be debited with all calls. Where shares had been sold before, but no transfer executed till after the order to wind up, it was held to be established that the official liquidator was the only person competent to act for the Company, and the Court would not compel him to register the transfer if he refused. (*Birmingham v. Sheridan*, L. J. 1864, Ch., 571.) Before the passing of the Act of 1862 in addition to the notes taken by the chief clerk, a file of all the proceedings in a winding up was kept in the chambers of the Judge, no documents being filed at the Record and Writ Clerks' Office. This practice, so far as regards the file of proceedings, is now altered by the following

Rule 58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding up of any Company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall

be kept by him, or otherwise, as the Judge may from time to time direct. Every contributory of the Company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three halfpence per folio of seventy-two words, and such file shall be produced in Court, or before the Judge, and otherwise, as occasion may require.

On referring to the sections of the Act, we find that, by section 94, the official liquidator is to be described by the style of the official liquidator of the particular Company of which he is appointed to that office, and not by his own name. He is further to take into his custody all the property of the Company, and to do all such duties in the winding up as the Court may impose.

Section 95 next defines the things which the official liquidator shall have power to do with the sanction of the Court, but section 96 provides that the Court may order that the official liquidator may exercise any of the powers contained in section 95 without the sanction of the Court, and where he is provisionally appointed may limit or restrict his power.

The things which the official liquidator is authorized to do with the sanction of the Court require here some consideration, and for this purpose the sub-sections of section 95 are marked numerically. As to sub-section, No. 1, it has been decided that where the official manager continued

a suit instituted before the winding up, he must be held to adopt any imperfection there might be therein, and abide by the consequences. (*Official Manager of the Grand Trunk &c. Railway v. Brodie*, 3 De Gex M. & G. 146.)

As the Company is not dissolved, all actions or other proceedings are to be commenced in the name of the Company. By sub-section 3, whenever a sale of real or personal property is made, it is to be in the same manner as in an ordinary Chancery suit. See rule 32 and Chapter XVI., but this may be affected by a special order under section 96.

As to sub-section 4. In performing the Acts mentioned in this sub-section it may occur that deeds will have to be executed out of the kingdom, and it may in such case be necessary to act upon the power contained in section 55, which is as follows :—

Execution
of deeds
abroad.

55. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

On sub-section 5 a serious question has arisen, how far a bankrupt shareholder is absolved from his liability in respect of calls made after his bankruptcy, but this subject is treated of more fully in Chapter on Calls, Chapter XII.

A Form of proof by an official liquidator against a bankrupt's estate for calls will be found in Appendix.

On sub-section 6, reference must be made to rule 48, by which the sanction of the Judge to the drawing, accepting, making, or endorsing of any bill of exchange or promissory note by the official liquidator is to be testified by a memorandum on such bill or note signed by the chief clerk. This may be done on the application of the official liquidator without summons. The Form of the memorandum will be found in Appendix, No. 72.

On sub-section 7, reference must be made to sections 105 and 106, which are treated of more fully with this sub-section in Chapter XII.

Should an order be made pursuant to sect. 96, a Form of the order will be found in Appendix, No. 25. A summons must be taken out to justify the order, embodying the powers required by the official liquidator.

We next find two important provisions in sections 159 and 160, the first enabling the official liquidator, with the sanction of the Court, to pay any classes of creditors in full, or make any compromise or arrangements with any creditors or persons claiming or alleging themselves to be creditors, or to have any claim against the Company, and the 160th section enabling him to compromise with the contributories and debtors to

the Company. These matters are proposed to be dealt with in a separate Chapter, XVII.

When the official liquidator has received sufficient assets, he will at once either pay the creditors in full or declare a dividend amongst them. For this purpose, he will obtain leave on a summons, and will forward the creditors notice of the payment. See Form of Notice, No. 38.

Liquidator's
accounts.

We now come to the provisions under which the official liquidator discharges himself by accounting for his receipts and payments.

By rule 19 the accounts of the official liquidator are to be left at Chambers at the times directed by the order appointing him, and at such other times as may be required by the Judge, and the same are to be passed upon notice to such persons (if any) as the Judge may direct, and to be passed and verified in the same manner as Receivers' accounts.

By rule 18 the official liquidator, in his accounts, is to be allowed such salary or remuneration as the Judge may direct, including the necessary payments for assistants or clerks, such salary or remuneration to be fixed at the time of his appointment or upon notice and proper evidence at any time thereafter, as the Judge may think fit. He may also be allowed by the Judge an amount on account of the remuneration thereafter to be fixed.

Remunera-
tion.

Under the Winding up Act, 1849, the scale of

remuneration was fixed at certain rates, varying from 5 to 8 per cent., upon the amount received and divided amongst the creditors or contributories of the Company in addition to any allowance or salaries to clerks or officers employed by the official manager in or about the winding up of the Company to be fixed by the Master. (See 12 & 13 Vict. c. 118, s. 6, and *Re North of England Joint Stock Banking Company*, 20 L. J., N. S. Ch. 462.)

Now, however, the official liquidator is to be allowed such a salary or remuneration as the Judge shall direct, in addition to his payments for assistants or clerks. The allowance to the clerks of the official liquidator is 3s. 6d. per hour for a managing clerk, 2s. 6d. per hour for a second clerk, and 1s. 6d. per hour for a third clerk. No scale of remuneration has at present been fixed by the Judges and they are guided by the character of the case, the time the official liquidator and his clerks are engaged, and the ease or difficulty experienced in collecting the assets, in determining the amount of the remuneration, which varies accordingly. It is probable that in some cases a salary only will be paid, but it is presumed that in such case the payments out of pocket to clerks would be allowed. The official liquidator has to state on affidavit the time he and his clerks are engaged, and the affidavit should also shew that

the work done by himself or his managing clerk was not such as a second or junior clerk could have done.

Under Consolidated Order, No. 24, the liquidator's accounts are to be brought in at the time appointed under the penalty of their salaries being disallowed, and interest after the rate of 5%, per cent. being charged in addition. The form of the account will be found in Appendix. When passed they are to be entered in two books, one to be kept by the chief clerk and the other by the solicitor for the party passing the account, and the account as entered in the books is to be verified by affidavit. The form of the affidavit by the official liquidator will be found in Appendix, No. 85. A certificate is then prepared as in Form, No. 86; and under rule 56, when settled with the official liquidator, the certificate is to be approved and signed by the Judge without delay, and upon being so signed may be filed and forthwith acted upon.

Having thus been through the general duties to be performed by the official liquidator during the winding up, some of which, however, must be more fully treated of in the various Chapters of this work where they come under consideration in connection with other matters, we come to two sections which provide that when the affairs of the Company are completely wound up the

Court is to dissolve the Company, and the order for that purpose is to be reported by the official liquidator to the registrar of Joint Stock Companies; before this is done the official liquidator must pass his last account, and pay over any balance he has in hand.

And lastly, we must consider section 97 (*supra*) ^{Solicitor.} which provides that the official liquidator, with the sanction of the Court, is to appoint a solicitor or law agent to assist him in the performance of his duties. A Form of the sanction of the Court will be found in Appendix.

By rule 68 it is provided as follows:—

Duties of Solicitor of Official Liquidator.

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the Court; and where the attendance of his solicitor is required on any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Judge shall direct him to attend.

Where two official liquidators are appointed they must agree upon one solicitor to represent both. (*The London and Manchester Direct &c. Railway Company, Ex parte Bass*, 1 De Gex & S. 722.)

In practice the solicitor for the official liquidator attends all the proceedings on the winding up of the Company, and entirely supersedes all other solicitors who may have been engaged on the petition to wind up.

It will be observed that except where the

official liquidator's presence is necessary, or he shall be directed to attend in person, he need not personally attend any proceeding where his solicitor is present.

In the event of the death, removal, or resignation of an official liquidator another is to be appointed in his room in the same manner as directed in the case of a first appointment, and such party may take the proceedings for that purpose as the Judge may authorize. (See Rule 16.)

CHAPTER XI.

LIST OF CONTRIBUTORIES.

The following sections and rules relate to the settlement of the list of contributories.

Sect. 98. As soon as may be after making an order for winding up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the Company to be collected, and applied in discharge of its liabilities.

Collection
and ap-
plication of
assets

99. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.

Provision as
to represent-
ative con-
tributories.

1st. Liability of members in Companies formed and registered under the Act of 1862, and in Companies formed and registered under the Joint Stock Companies Acts.

Sect. 23. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a Company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Definition of
"member"

Liability of Members.

Liability of
present and
past mem-
bers of Com-
pany.

Sect. 38. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

- (1). No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:
- (2). No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:
- (3). No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (4). In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (5). In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association;
- (6). Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:
- (7). No sum due to any member of a Company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the Company,

payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

74. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act, in the event of the same being wound up: It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory. Meaning of contributory.

75. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made. Nature of liability of contributory.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly. Contributories in case of death.

77. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the Company being wound up; and for the purposes of this section any person who may have taken the benefit of any Contributories in case of bankruptcy.

Act for the Relief of Insolvent Debtors before the 11th day of October, 1861, shall be deemed to have become bankrupt.

Contribu-
tories in case
of marriage.

78. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the Company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Application
of Act to
Companies
formed under
Joint Stock
Companies
Acts.

176. Subject as hereinafter mentioned, this Act, with the exception of Table A. in the first Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts (see chap. 1), or any of them, in the same manner in the case of a limited Company as if such Company had been formed and registered under this Act as a Company limited by shares, and in the case of a Company other than a limited Company as if such Company had been formed and registered as an unlimited Company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited Company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

2nd. Liability in the case of a Company not formed but registered only under the Act of 1862, and in the case of a Company not formed but registered under the Joint Stock Companies Acts.

Effect of
registration
under this

Sect. 196. When a Company is registered under this Act in pursuance of this part (7) thereof, all provisions contained

in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following; (that is to say,)

- (5.) That in the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding up the Company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory, being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this

Act of a
Company
not formed
thereunder.

Application
of Act to
Companies
registered
under Joint

Stock Com-
panies Acts.

Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

3rd. Liability in the case of unregistered Companies.

Who to be
deemed a
contributory
in the event
of Company
being wound
up.

Sect. 200. In the event of an unregistered Company being wound up every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the Company, and every such contributory shall be liable to contribute to the assets of the Company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

General Rules.

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the Judge shall direct, make out and leave at the chambers of the Judge a list of the contributories of the Company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the Judge, be varied or added to, by the official liquidator.

30. Upon the list of contributories being left at the chambers of the Judge, the official liquidator shall obtain an appointment for the Judge to settle the same, and shall

give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares, or interest such person is included in the list; and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

31 The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Services of Summonses, Notices, &c.

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons, or order, or other proceeding, through the post in a pre-paid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing Rule 20; and such notice, or copy summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

64. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the Judge is satisfied that such service is in other respects sufficient.

1st. The Liability as Contributories.

In the foregoing sections we have the general

provisions by which the parties who are liable to be placed on the list of contributories are to be ascertained, and the result appears to be as follows :—

Companies
formed and
registered
under Joint
Stock Com-
panies Acts
and Act of
1862.

1st. In the case of Companies formed and registered under the Act of 1862, and of Companies formed and registered under the Joint Stock Companies Acts, all persons are liable as contributories who have subscribed the memorandum of association, or who have agreed to become members of a Company, and whose names are entered on the register of members, whether they are or are not members at the time of winding up. The liability of such persons extends to contribution to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories *inter se*, limited, however, in the case of a Company limited by shares or guarantee, to the amount unpaid on the shares or in respect of the guarantee, and in the case of any special provision in any policy of assurance or contract limiting the liability of any individual members on the same to such provision, and qualified in the case of past members, so that no past member is to be liable if he has ceased to be a member for one year or upwards prior to the winding up, or to contribute

in respect of any debt or liability contracted after he has ceased to be a member, nor to be liable to contribute at all, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act.

2nd. In the case of Companies, not formed under the Act of 1862, but registered thereunder, and to Companies registered but not formed under the Joint Stock Companies Acts.

Companies registered only under Joint Stock Companies Acts or Act of 1862.

(1st.) In respect of debts and liabilities contracted after the registration under the above Acts, the same persons are liable with the same limitations and qualifications as in the case of Companies formed and registered under the Act of 1862.

(2nd.) In respect of debts and liabilities contracted before registration under the Joint Stock Companies Acts or the Act of 1862, every person is to be a contributory who is liable at law or in equity to pay or contribute to the payment of such debts, or to pay or contribute any sum for the adjustment of the rights of the contributories *inter se* in respect of such debts, or to pay or contribute to the payment of the costs of winding up, so far as relates to such debts.

3rd. In the case of an unregistered Company, the same persons are liable as those mentioned in the last paragraph in the case of debts or liabilities due prior to registration.

Unregistered Companies.

In all the three above mentioned cases in the

Death.

event of the death of any contributory before or after he has been placed on the list of contributories, his personal representatives, heirs and devisees are to be liable to contribute in due course of administration, and are to be deemed contributories accordingly.

Bankruptcy. In the event of the bankruptcy of any contributory, either before or after he has been placed on the list of contributories, his assignees are to be deemed contributories as assignees, and are to admit proof for any calls. An insolvent is to be considered as a bankrupt.

**General
liability
under Act
of 1862.**

Such are the general rules with regard to contributories, and in the case of Companies formed and registered under the Act of 1862, or the Joint Stock Companies Acts, the means of ascertaining who are to be contributories are clearly given, and amount to this, that every person who has agreed to become a member, and whose name is on the register of shareholders, is liable; and it will be seen hereafter, that if at the time of winding up, the agreement to become a member is clear, but the name is not on the register of shareholders, on a proper application to the Court the name will be put on the register, see sects. 35 and 98, *post*. The power given to the Court to rectify the register of members whilst settling the list of contributories (sect. 98), would seem to justify the construction that the contributory's name must be on the register. It is not essential,

however, that the agreement to take shares should be testified by a formal valid contract. Any person who acts as a shareholder, or allows himself to be held out as such, or who even takes shares which cannot legally be issued, will be held in equity to have agreed to become a member of the Company, and liable as a contributory. (See *Daniel's case*, 1 De Gex & J. 372; *Hitchcock's case*, 3 De Gex & S. 92; and *Davidson's case*, 3 De Gex. & S. 21). In *Currie's case*, (2 N. R. 145), the Court held parties liable as contributories for shares which they had verbally agreed to take, at a meeting of the promoters of the Company, held before the Company was registered.

In the case of Companies coming under the 2nd and 3rd classes (except subdivision 1 of class 2,) above mentioned, the Act of 1862 does not give the means of ascertaining who are to be contributories so clearly, but merely says that every person is to be a contributory who is liable at law or in equity to pay or contribute as therein mentioned. On referring to sect. 206 of the Act of 1862, we find it provided that "no repeal thereby enacted shall affect (3) any right, privilege, or liability incurred under any Act hereby repealed." In the case therefore of Companies established under any of the repealed Acts, except the said Joint Stock Companies Acts, and in the case of any such Companies as have been regis-

Prior to Act
of 1862.

tered only under the said joint Stock Companies Acts, as to any unpaid debts or liabilities incurred prior to registration, it would appear that the liability to contribute is to be ascertained as if the repealed Acts under which they were formed, were existing for that purpose. Under those Acts, liability, as a contributory, depended upon the question whether the alleged contributory was a member of the Company or would be held in equity to be such, or whether, not actually being a shareholder, he was liable to contribute towards payment of the debts of the Company. See Lindley on Partnership, vol. 2, pages 1081 and 1111.

Under the Joint Stock Companies Acts, numerous questions arose as to the liability of the contributories in consequence of the Limited Liability Act of 1856 requiring an acceptance in writing, but that has now been repealed, and we are left to the general provision (subject as before mentioned) that all persons who have agreed to become members, and whose names are on the register of shareholders, are to be deemed members of the Company.

Persons held
liable.

To ascertain the parties who have so agreed is a wide inquiry, and one into which, having regard to the limits of this work, it is not proposed to enter except so far as to shew the classes of persons who in time past have been held to

be contributories, omitting those whose liability was decided under provisions which are now repealed.

The following persons have been held liable as contributories :—

Shareholders under an unauthorized agreement with directors.

Allottees of shares.

Applicant for shares.

Assignee in bankruptcy as assignee.

Bankrupt under Act of 1849 for calls made after bankruptcy.

Cestui que trust where shares stood in name of a nominee.

Devisees.

Directors for qualification shares.

Executors, personally.

Do. as executors.

Forfeited shares, past holder of.

Husband, separately.

Husband and wife jointly.

Holder of shares illegally issued.

Infant, father of.

Married woman.

Mortgagee of shares, personally.

Paid up shares, where no power to issue, holder liable.

Persons acting as shareholders.

Pledgee of shares, personally.

Promoters and provisional committeemen.

Registered holder.

Shares passing by delivery, holder of.

Subscribers.

Tenant for life, personally.

Transferee (and although transfer incomplete).

Transferror on invalid transfer.

Transferror on incomplete transfer.

Transferror to avoid liability.

Transferror on transfer to nominee of directors
to stop inquiry.

Transferror on transfer to Company.

Trustees, personally.

Ultra vires, holder of shares so issued.

Do. past holder of shares.

In most of these cases there have been instances of decisions the other way, that is to say that no liability existed, and as each case of course depended on its own particular circumstances, so in future every case must depend. Each, however, turns on the question, if there has been an agreement to take the shares, whether that agreement was complete and binding, or if not whether the parties have so acted as to be held in equity to have agreed to become members of the Company, or to be liable to contribute towards payment of the debts of the Company. Where once the shares are allotted, delivered, and accepted by the member to whom they were issued,

and money paid thereon, there can be no doubt of his liability, or of the liability of his transferees where the shares have been duly transferred; but where the shares are not delivered, or some act of ownership exercised, or where the shares are derived by the holder through third parties other than by transfer, then the question as to the liability of the holder personally is mostly raised. Instances of all the above cases will be found in the Table of Cases appended to this work. In one case where the agreement was complete the party agreeing to take the shares was held not liable on the ground that he recalled his agreement before the shares were allotted, thereby shewing that until the Company had acted on the agreement by allotting the shares, the party agreeing had power in a *bond fide* case to recall his act. (*Gledhill's Case*, 5 L. T. N. S. 11.)

Will draw from agreement

It may here be remarked that the person whose name is on the register, is the person who, as a general rule is liable, although such person may be a trustee for and indemnified by another. By section 30 of the Act, no notice of any trust can be entered on the register, and, therefore, if a person is placed on the register, and is described as a "trustee," and so receives dividends, he is still liable personally. (*Hoare's Case*, 10 W. R. 381.)

Person on register liable although a trustee.

The *prima facie* liability to contribute being first ascertained or admitted, it is sometimes urged that nevertheless the alleged contributory is not

Misrepresentation.

liable by reason of some matter that occurred at the time he took the shares, for instance misrepresentation or fraud on the part of the Company directly or through its agents, whereby the party was induced to take the shares. A few cases only have occurred in which this question has been raised and decided in favour of the contributory, amongst them *Brockwell's Case* and *Froud's Case*, both in the matter of the Royal British Bank. The authority of the first case has been doubted in subsequent cases decided by the Lords Justices. In *Barrett's Case, re The Leeds Banking Company*, (13 W. R. 543) V. C. Kindersley stated that he considered that at present the law as to an outsider is this, "that in order to make the person who had taken the shares on the faith of a report not liable, there must have been a representation made to him by the Company or their authorized agent." The Master of the Rolls, in *Blake's Case, re The Life Association of Scotland* (13 W. R. 486), intimated his opinion that, as it was stated in *Bell's Case*, a Company might commit a fraud, and in the case before him held, that a Company whose prospectus represented as directors persons who were not shareholders was guilty of misrepresentation, and that Mr. Blake, who, on the faith of representations which proved to be false, had after the receipt of the prospectus above-mentioned applied for shares, was not a contri-

butory for the shares which had been allotted to him, he having repudiated his shares and obtained a return of his deposit in exchange for the scrip certificate on discovering the misrepresentation, and that, although his name was not removed from the register of shareholders. See also on this question the Table of Cases, titles, "Fraud" and "Misrepresentation."

As between the contributories *inter se* when settling their rights and liabilities in that respect, the question of misrepresentation or fraud, either in the issue of the shares or in inducing the contributories to take them, will, it is apprehended, be admissible. Whatever may be the state of the authorities on the question of misrepresentation, it has been held that such a contention could not possibly be raised where the shares were bought from a third person and not direct from the Company. (*Worth's Case*, 4 Drew. 529.) Where an important interpolation has been made in the deed of settlement of the Company after the signature of the alleged contributory was obtained and without his knowledge, and where the objects of the Company have been materially altered subsequent to the application for the shares, and without the concurrence of the alleged shareholder, it has been held that no liability as a shareholder or contributory existed. (*Felgate's Case*, 13 W. R. 305; *Ship's Case*, 13 W. R. 450.)

2nd. The proceedings on settling the List.

Settlement of
list.

By sect. 98 the Court is to settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of the Act; and on settling the list the Court is to distinguish between persons liable in their own right and persons who are liable as contributories as being representatives of or being liable to the debts of others; and where the personal representative of any person is placed on the list it is not necessary to add the heir or devisee unless the Court shall think fit.

Proceedings
on.

This list is to be prepared by the official liquidator, and verified by him. It is then carried into chambers and a time appointed to proceed thereon, which is to be advertised. Notice is also to be given to every person included in the list, stating in what character and for what number of shares or interest such person is included.

Any variation or addition may be made in the list by the official liquidator at any time by leave of the Judge, but in such case notice of the variation or addition must be given to those affected thereby. The notice must in all cases be served four clear days before the day appointed to settle the list. It is served through the post by a prepaid letter directed to the last known place of

abode of the contributories or to the solicitor if an appearance is entered. (Rule 63.) The advertisement (if directed) is, pursuant to rule 53, to be inserted once in the *London Gazette*, and in such other newspapers and for such number of times as may be directed. The Judge may, however, dispense with any advertisement if he thinks fit. (Rule 53.)

A form of the list of contributories will be found in Appendix. Also the following forms: Affidavit verifying list. Notice to contributories of meeting to settle list. Affidavit of service of notice and supplemental list of contributories and affidavit in support. At the meeting to settle the list the affidavit of service of the notices and the *London Gazette* and the other papers containing the advertisement (if directed) must be produced, and the settlement is then proceeded with.

It is usual to take and settle all the unopposed cases in the first instance, and then the opposed.

When the opposed cases are taken the course pursued thereon is the same as in an ordinary Chancery suit. The official liquidator produces his evidence to fix the alleged contributory, and then the alleged contributory produces his in opposition. This evidence may be either *viva voce* or by affidavit (see Chapter XV.), and, when fully gone into, the chief clerk gives his decision. In the event of the dissatisfaction of either party with this decision such party may either at once

Opposed cases.

take the opinion of the Judge in chambers or in Court (see 15 & 16 Vict. c. 80, ss. 29 and 30, and *Parr v. Lovegrove*, 6 W. R. 201, also Morgan's Chancery Acts and Orders, 3rd ed., p. 147), or he may wait until the chief clerk has settled his certificate, and then, within four days after the chief clerk has signed it, and before it is adopted by the Judge issue a summons to take the opinion of the Judge thereon (Consolidated Order 35, rule 49), which is either heard in chambers or in Court as is called for. Again, he may wait until the certificate is filed and within eight days thereafter take out a summons to vary or discharge the certificate, which may also be heard in Court or in chambers. (Consolidated Order 35, rule 52; see Morgan, p. 541.) In practice, however, it is usual for the alleged contributory, if dissatisfied with the decision of the chief clerk, at once to issue a summons to strike his name off the list. Evidence may be gone into on this summons. It is heard by adjournment from the chief clerk before the Judge himself in chambers, or in Court if both parties desire to attend by counsel.

Opinion of
Judge how
taken.

Reviewing
list.

On referring to rule 73 of the Orders of the 11th November, 1862, it will be seen that the Court has power to review its decisions, but this power is more fully treated of in Chapter XIV.

By the Winding up Act, 1848, sect. 81, power was given to the contributories to summon other persons to shew cause why they should not be

inserted in or excluded from the list. There is no corresponding clause to this in the Act of 1862, but as the creditors and contributories are now parties to the proceedings such an application may still be made by them. A form of summons will be found in the Appendix.

Before quitting this subject it is necessary ^{to rectify the} further to remark upon the power of the Court to rectify the register of members, which operates both in favour of and against the contributories. The necessity for the official liquidator or the alleged contributory to take advantage of this power in the event of a defective register may occur, having regard to the meaning of the term "member" contained in sect 23. As before stated in this Chapter power is given, by sect 98, to rectify the register on settling the list of contributories. The 35th and 36th sections provide more fully as follows:—

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any Company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, as respects Companies registered in England or Ireland, by motion in any of Her Majesty's superior Courts of law or equity, or by application to a Judge sitting in chambers, or to the Vice Warden of the Stannaries in the case of Companies subject to his jurisdiction, and as respects Companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified, and

*Remedy or
infract
entry or
omission of
entry in
register.*

the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the Court, if a Court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal in the manner directed by The Common Law Procedure Act, 1854," shall lie.

Notice to
registrar of
rectification
of register.

36. Whenever any order has been made rectifying the register, in the case of a Company hereby required to send a list of its members to the registrar, the Court shall, by its order, direct that due notice of such rectification be given to the registrar.

In *The Moseley Green Coal Company, Ex parte Fox* (11 W. R., L.C., 577), upon an appeal against an order of the Commissioner in Bankruptcy fixing Sir E. Fox on the list of contributories, his name appearing on the register, an application had to be made on a motion to the Lord Chancellor in Chancery to amend the register. Cases on this subject will be found in the Table of Cases. In *Re The Plumstead, &c., Water Company Limited, Ex parte Jonassohn* (not reported), an application was made to rectify the register after the applicant had been settled on the list of contributories and a call made on him, and such

application was granted. A form of summons in chambers to rectify the register will be found in Appendix.

By rule 31 the chief clerk is to certify the result of the settlement of the list, and inasmuch as, Certificate of chief clerk. under sect. 102 (Chap. XII.), no call can be made on any person until he is settled on the list, the chief clerk is empowered to certify the result of such settlement down to a particular time, as to any particular person or persons. The form of certificate will be found in the Appendix. It is to be prepared by the chief clerk, and a copy made for the solicitor by the stationer to the chambers. Unless the settlement of the certificate is proceeded with by adjournment from a prior meeting a summons to settle it will have to be issued for the purpose, which is to be served on all those contributories who have appeared, service being made on the contributories or their solicitors by post prepaid. (Rule 63.) If no summons is issued notice of the appointment to settle the certificate must be served on the contributories or their solicitors in manner before mentioned. When settled the certificate is engrossed by the stationer of the Court with a 5s. stamp, and, after being examined by the solicitor with the junior clerk at the chambers, is signed by the chief clerk, and at the expiration of four days from his so signing it, unless a summons is in the meantime issued to take the opinion of the Judge thereon, the same

is signed and approved by the Judge and afterwards filed by the chief clerk at the Record and Writ Clerks' Office. (See Consolidated Orders, 35, rules 51 and 55.) An office copy is then taken by the official liquidator. Within eight days after the certificate has been signed and adopted by the Judge, any party who is dissatisfied therewith may apply by summons or motion to vary or discharge it. See Form of Summons in Appendix.

CHAPTER XII.

CALLS.

After the list of contributories is settled and certified, the Court has power at once to make a call upon those contributories who, for the time being, have been settled on such list.

Sect. 102. The Court may, at any time after making an order for winding up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of
Court to
make calls.

The liability of the contributories to the payment of calls is governed by the sections referred to at the beginning of Chapter XI., the settlement of the list of contributories in its various classes depending upon such liability.

Sect. 75. The liability of any person to contribute to the assets of a Company under this Act, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced,

Nature of
liability of
contributory.

but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability ; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Effect of order on share capital of Company limited by guarantee.

90. When an order has been made for winding up a Company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt (in England and Ireland of the nature of a specialty) due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Power of Court to order payment into bank.

103. The Court may order any contributory, purchaser, or other person from whom money is due to the Company to pay the same into the Bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Provision in case of representative contributory not paying monies ordered.

105. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the monies due.

Order conclusive evidence.

106. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

General Rules.—Calls.

33. Every application to the Judge to make any call on

the contributories or any of them, for any purpose authorised by the said Act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served, four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or if the Judge shall so direct, notice of such intended call may be given by advertisement.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the Judge shall so direct.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and nonpayment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

38. All orders for payment of calls, balances, or other monies due from any contributory or other person shall direct the same to be paid into the Bank of England to the account of the official liquidator of the Company, unless on account of the smallness of the amount or other cause it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice to the purport or effect set forth in Form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate to the purport or effect set forth in form No. 41 in the third schedule hereto, to be signed by such cashier and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the Bank of England, an affidavit of the official liquidator to the purport or effect set forth in No. 43 in the third schedule hereto shall be sufficient evidence of the non-payment thereof.

Under sect. 75 all unpaid calls are to be deemed specialty debts, and so is share capital not called up in a Company limited by guarantee pursuant to sect. 90.

PART I.—*For what purpose, on what persons, and to what extent a Call may be made.*

In making a Call authorized by sect. 102, the chief clerk first considers the persons on whom he can make it. *Primâ facie* they will be the persons for the time being placed upon the list of contributories, but inasmuch as those persons may be only partially liable, or liable as the representatives of others, it has to be ascertained—1st. For what purpose, that is to say, to pay what debts or liabilities of the Company the call is required. 2nd. The persons liable to payment of such debts or liabilities of the Company; and 3rd, if such persons are only liable to a limited extent, to what

extent, and to pay what part of the debts and liabilities they are so liable.

1st. For what purpose, and to pay what debts and liabilities of the Company, a call may be made. For what a call may be made.

By sect. 102 the Court may make a call for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expences of winding up, and for the adjustment of the rights of the contributories *inter se*. What is included in the debts and liabilities of the Company? Exclusive of common trade debts, it has been decided that in this category is included interest on specialty debts, costs, and money borrowed by the directors and applied for the benefit of the Company. On the other hand it has been decided that calls could not be made for payment of money borrowed by the directors and debts incurred in excess of their powers where not confirmed by a general meeting; interest on simple contract debts (but see rule 26), and solicitors' costs where there have been laches. See Table of Cases. The costs, charges, and expences have also to be provided for. In *Ex parte Dale, Re Wolverhampton, Chester, &c., Railway*, (1 De Gex M. & G. 513), it was held that "where the Master had estimated Estimate. the total amount for which the contributories were liable, he might make a call for that amount even where the costs had not been taxed or the exact amount of liabilities ascertained, and also that he

might make the call for such amount as was likely, in his opinion, to raise the necessary sum.

Persons
liable.

2nd. The persons liable for payment of such debts and liabilities.

In the first instance all the present members of the Company are liable to pay all the existing debts and liabilities, including persons in a representative character, or any one or more of the representatives of a deceased person to the extent of the estate they represent. Directors may be liable in respect of qualification shares, and a bankrupt, under the Act of 1849, on a call made after his bankruptcy. Holders of paid up shares are not liable. A transferee is liable for the debts due before the transfer to him and still unpaid where there is no provision in the Articles of Association of the Company to the contrary. A call may also be made on a transferrer of shares in a Company formed and registered under the Act of 1862 or the Joint Stock Companies Acts, who has transferred his shares less than twelve months prior to the petition to wind up, for debts due prior to his transfer, if the present holder of the shares is unable to pay, and on a transferrer of shares in an unregistered Company who has transferred his shares less than three years prior to the petition to wind up, for debts due prior to his transfer, if the present holder of the shares is unable to pay. (See sects. 38 and 200.) The present shareholders in an unlimited Company are liable to the pay-

ment of all the debts in full. If the Company was originally an unlimited one, but afterwards registered itself with limited liability, the present holders of shares who were shareholders during the time the Company was unlimited are liable to pay all the debts incurred during that time in full. (*Stevenson's Case*, 11 W. R. 131, and 32 L. J. Ch. 99, and *The Garnett and Moseley, &c., Mining Company v. Sutton*, 13 W. R. 412.)

3rd. If the contributories are liable only to a certain extent, to what extent and for payment of what part of the debts and liabilities they are liable.

Extent of liability.

In the case of a Company limited by shares or guarantee, no call can be made for any purpose beyond the amount unpaid on the shares, or in respect of the guarantee. A transferee is liable only for the debts due at the time of the transfer by him as just mentioned. An executor, as executor to the extent of the assets of the estate, in a due course of administration. Assignees of bankrupt to the same extent. Again, if by the contract the liability of an unlimited Company is limited, no call can be made beyond the limit. (Sect. 38.)

Finally. A call is to be made for adjusting the rights of the contributories *inter se*. In the case of an unlimited Company this is important, and so in that of a limited Company where the debts and liabilities and costs of winding up are below the amount unpaid on the shares, and in

considering the call many questions arise which do not as against creditors. Questions of misrepresentation, or contract as between the contributories and the Company on the purchase of the shares may then be entertained, and questions as between the general body of shareholders and the directors. In one case the directors were held to be alone liable, as between themselves and the contributories. (*Re Dover, Deal and Cinque Ports Railway Company, Ex parte Londesborough*, 4 De Gex M. & G. 411.)

No set-off is now allowed in a limited Company against a call until after all the creditors are paid, but after that time a set-off is permitted as between the contributories *inter se* (sect. 101, *post*, Chap. XVI.). In the case of an unlimited Company a set-off may be allowed in respect of any debt due to a contributory on any independent contract with the Company, but not for moneys due to him as a member of the Company in respect of any dividend or profit. (See subsection 7 of sect. 38, Chap. XI.) In *Lord Londesborough's case* above quoted, Lord Justice Knight Bruce stated, page 421, that it had been decided "that, if upon an application to the Court it should appear in a satisfactory manner that any of those upon whom a call purports to be made, though upon the list of contributories ought not to be on that list, the call ought not to be enforced against such persons." In *Dale's case* (1 De Gex,

Disputing
liability after
call made.

M. & G. 513), it was held that where the contributories had an opportunity of questioning the report of the Master as to having settled upon the list certain persons, the Court would assume the report to be substantially correct. A call made after 1861 in a winding up under the Acts of 1848 and 1849, is a debt "contracted after the passing of the Bankruptcy Act, 1861." (*Re Williams, ex parte Harding*, 12 W. R., L. C. 630.) But a call in the matter of the winding up of a Company under the Act of 1862, is not such a debt having regard to the 75th section of the Act of 1862 (*Ex parte Canwell, re Vaughan*, 33 L. J. Ch. 26.) As before mentioned a call under the Act of 1862 is a specialty debt, *vide* section 75.

PART II.—*The Proceedings on making a Call.*

The call is to be made on a summons or notice by advertisement if the Judge shall so direct. The summons is taken out by the official liquidator's solicitor, and a copy served four clear days before the day appointed for making a call on each contributory on whom the call is proposed to be made, or his solicitor, by post prepaid, addressed to the solicitor of the party to be served (if any), or otherwise to the party himself at the address entered or last entered pursuant to rule 62, or if no such entry has been made, then to the last known address or place of abode of the contributory (rule 63), see Chap. XI. (See Form of

Summons, Appendix.) If advertisements are ordered the chief Clerk will give directions. (rule 53.)

On the return of the summons an affidavit of service, and of the insertion of the advertisement, if directed, must be produced, and also an affidavit by the official liquidator, shewing the necessity for the call (See Form.)

General
order.

If the call is made, an order is drawn up, specifying the call made and the date of payment, (see Form, sect. 103, and rule 38), and served on each of the contributories by post, in the same way as the notice above mentioned. Together with the copy of the order the official liquidator is to serve a notice specifying the amount or balance due from the contributory upon whom the call is made (rule 34), and also, where the amount due in respect of such call is to be paid into the Bank of England to the account of the official liquidator, a notice informing the contributory how the payment is to be made, (see Form, and rule 39). No advertisement of the call is requisite, unless directed. (Rule 34.)

At the time of making the call, the further proceeding thereon is to be adjourned to a day subsequent to that on which the call is payable, and afterwards continued, if need be, by adjournment and at the time appointed, upon proof by affidavit that the order for the call and the notice were duly served (see Form), and an affidavit by

the official liquidator of non-payment (see Form and rule No. 40), an order may be made ^{Enforcing payment.} against each defaulter personally to pay the amount appearing due from him. This order may also be made upon a special summons to enforce payment of the call, (see rule 35 and Form). The summons is served as above.

The order made on this application must be served personally, and have endorsed thereon the following notice. "If you, the within named A. B., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the serjeant at arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order." (See Consolidated Orders, No. 23, rule 10, and *post*, Chap. XVIII.) Along with the copy of the order the notice referred to in rule 39 must be served.

The proceedings to enforce the order will be found, *post*.

It will be observed that by rule 38, before service of the general order for the call, directing payment into the bank, or after the time thereby fixed for payment, an order may be made without notice for payment of the amount due in respect of the call to the official liquidator, if it shall be thought proper for the purposes therein mentioned.

By sect. 105, in case the representatives of a

deceased contributory do not pay the amount due from such contributory, proceedings may be taken to administer the real and personal estate of the deceased by the official liquidator in his official name, and, if necessary, the official liquidator may take out letters of administration to the estate of a deceased contributory in his own name, sect. 95. In either of these cases the order for the call is to be conclusive evidence that the money is due, and of the truth of all pertinent matters mentioned therein, except in proceedings against the real estate, in which case it is only to be *prima facie* evidence for charging the real estate, unless the heir or devisee was on the list at the time it was made. (Sect. 106.)

Sub-section 7 of sect. 95 is as follows:—The official liquidator is to have power with the sanction of the Court.

“To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and in all cases where he takes out letters of administration or otherwise uses his official name, for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters, or recover such monies, be deemed to be due to the official liquidator himself.”

CHAPTER XIII.

PROOF OF DEBTS.

The following provisions relate to the proof of debts.

Sect. 107. The Court may fix a certain day or certain days Court may on or within which creditors of the Company are to prove exclude their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

158. In the event of any Company being wound up under this Act, all debts payable on a contingency, and all claims against the Company, present or future, certain or De s of all contingent, ascertained or sounding only in damages, shall descriptions be admissible to proof against the Company, a just estimate to be prov d being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Proof of Debts.

Rule 20. For the purpose of ascertaining the debts and claims due from the Company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the Judge shall direct; and such a lvertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, as far as he is able,

which of such debts and claims are justly due from the Company; and he shall make out and leave at the chambers of the Judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance.

24. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims.

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said Act, shall, so far as it is possible, be estimated according to the value thereof at the date of the order to wind up the Company.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest, shall be entitled to interest, after the rate of 4 $\frac{1}{2}$ per centum per annum, from the date of the order to wind up the Company, out of any assets which may remain after satisfying the costs of the winding up, the debts and claims established, and the interest of such debts and claims as by law carry interest.

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

PART I.—*What Debts may be proved.*

Prior to the Act of 1862, there was no provision in any of the Winding up Acts as to the nature of the debts which were provable under the proceedings for winding up a Company, but by sect. 158 of the Act of 1862, following the 178th section of the Bankruptcy Law Consolidation Act of 1849, it is now provided that all debts payable on a contingency, and all claims against the Company, present or future, certain or contingent, ascertained or sounding only in damages, are to be admissible to proof, a just estimate being made, so far as is possible, as to the value of all such debts and claims as may be subject to a contingency or sound only in damages, or for some other reason, do not bear a certain value; and by rule 25, this estimate is to be made as at the date of the order to wind up.

We also find for the first time that interest is to be allowed on simple contract debts from the date of the order to wind up at £4 per cent.

Costs.

per annum, but this interest is not to be paid until all the costs of winding up the Company, the debts and claims allowed, and the interest on such debts as by law carry interest, are satisfied. (Rule 26.) The costs of proving any debt are to be allowed as in the case of proof of debt in a cause (rule 27), and will be added to the debts. In the case of a limited Company should no more than a dividend be payable the costs stand on the same footing as the debt, and a dividend only is paid thereon.

Such are the new provisions of the Act and Rules of 1862, and, without going further into the particulars of sect. 158, we propose to set out instances of debts which, prior to the Act of 1862, were allowed or disallowed, as amongst those allowed will be found some coming under the descriptions set out in sect. 158.

The following claims were allowed to be proved :

Claims
allowed.

- Claim on an annuity granted by an assurance office, the value of.
- „ on bills of exchange.
- „ for costs.
- „ for costs of action by creditor.
- „ on invalid debentures in the hands of an assignee.
- „ by directors for fees.
- „ by directors for money lent by, where applied for benefit of Company.

Claim by directors for money lent to Company,
through directors or trustees.

Claim by engineer for services.*

On the other hand the following claims have ^{Disallowed}
been disallowed :—

Claim for advertisements before registration of
Company.

Claim on contract, for purchase of business
without authority ; claim on contract made under
error in law ; claim for costs, when incurred,
ultra vires.

Claim by directors on contract with them.

„ „ for salary.

„ „ for money lent.

Claim for money lent by or through directors
who had no power to borrow.

Claim on marine policy, where effected with a
life insurance office, *ultra vires*, but the insurers
were in this case declared entitled to have the
premiums returned in full.

Instances of all these claims will be found in
the Table of Cases.

The Statute of Limitations may be pleaded in ^{Statute of}
bar to any claim to which it properly applies. A ^{Limitations.}
claim may be allowed as a claim, subject to the
result of an action directed to be brought or con-
tinued. (*Re Counties Union Assurance Company*,
5 W. R. 389.)

A shareholder is not now allowed to prove in ^{Shareholder}
competition with the creditors, see sect. 101.

By sect. 47, it is enacted that

Promissory
note or
bill of ex-
change, how
made.

“ A promissory note or bill of exchange shall be deemed to have been made, accepted or indorsed on behalf of any Company under this Act, if made, accepted or indorsed in the name of the Company by any person acting under the authority of the Company, or if made, accepted or indorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.”

PART II.—*The Proceedings on proof of Debts.*

Advertise-
ment.

As soon as the order to wind up is carried into chambers, and at the meeting to consider such order, directions are given by the chief clerk appointing a day for the claims to be sent to the official liquidator, and also for the advertisement for creditors. This advertisement, pursuant to rule 53, is to be inserted once in the *London Gazette*, and in such other newspaper or newspapers, and for such number of times, as may be directed (see Form.) Usually the advertisement is directed to be inserted three, or in a heavy case four times, if the registered office of the Company is in the country, in a local newspaper, and in two London daily papers, and if the registered office is in London, in two London daily newspapers. But the chief clerk also considers where the general body of creditors are supposed to be resident, and directs the advertisements accordingly.

The advertisement directs all the creditors on or before a certain day to send their names and addresses, and the names and addresses of their solicitors, and also the amount of their debts, to

the official liquidator, and if required, by notice from the official liquidator, but not otherwise, to come in and prove their claims at such times as shall be specified in such notice, and it also fixes a day for adjudicating upon the claims. On the claims being sent to the official liquidator, he investigates them, and makes a list thereof, distinguishing those concerning which there is no doubt that they are justly due and owing from those which in his opinion ought to be proved in the ordinary way. He is then to verify those which are justly due by an affidavit (see Form). (Rule 22.)

Notice to
official liquidator.

With regard to those debts which the official liquidator or the Judge considers ought to be proved in the usual way, the official liquidator is to give four days notice to the creditors to come in and prove their claims by a day to be named in such notice (see Form.) In such case the creditors' solicitor will file the affidavits in support of the claim, and give notice thereof to the official liquidator. At the time appointed for adjudicating upon the claims, or at any adjournment thereof; the creditors whose claims are disputed are to attend by their solicitors. An appearance is in the first instance to be entered by the creditor or his solicitor (see rule 62.) Upon the claims being called in their turn, they are either considered on the statements contained in the affidavit of the official liquidator or on the affidavits filed by the creditors. The same course is pursued on these

Opposed
claim.

claims as on proofs in a cause, and the deponents may be cross-examined, if necessary, upon their affidavits. The adjudication may be adjourned from time to time. As already seen, a creditor who is required to prove his debt, is entitled to have his costs of proof added to his debt. An outline of an affidavit in proof of a debt will be found in the Appendix.

Notice of
allowance.

Where a claim is allowed without the creditor attending, notice thereof is given to him (see Form, Appendix.)

Certificate;

The chief clerk certifies the result of the adjudication (see Form); and any creditor whose claim has been disallowed, or the official liquidator, on any claim that may be allowed, may take the opinion of the Judge thereon, or take out a summons to vary or discharge the certificate within the same time and in the same manner as in the case of the certificate on the list of contributories. (See Chap. XI.)

CHAPTER XIV.

PROCEEDINGS BY WAY OF APPEAL, RE-HEARING,
REVIEWING, OR TAKING THE OPINION OF THE
JUDGE.

We here propose to direct attention to all the proceedings by which the opinion of any chief clerk or judge may be canvassed by way of appeal or otherwise. By the Order of 11th November, 1862, rule 74, it is provided, that the general practice of the Court, including the course of proceedings and practice at the Judge's chambers, as provided by the stat. 15 & 16 Vict. c. 80, and the General Orders of the Court relative thereto, shall, in cases not provided for by Companies Act, 1862, or those rules, and so far as the same are applicable and not inconsistent with the said Act and rules, apply to all proceedings for winding up a Company.

To begin therefore at the lowest stage, the proceedings in chambers, we find that the opinion of the Judge may be taken in chambers during the progress of any matter upon any question raised before the chief clerk. For this, no summons whatever is required, but it is an inherent right in every suitor under sect. 33 of the 15 & 16 Vict. c. 80 (See Morgan's Chancery Acts

Opinion of
Judge.

and Orders, p. 147.) The suitor is not obliged however, to take that course, but he may wait till the certificate of the chief clerk is made, and after it is signed by the chief clerk and within four days from such time he may take out a summons to obtain the opinion of the Judge upon any question he may wish to raise. See rule 56 and Consolidated Orders, No. 35, Rule 49. If he allows such four days to elapse, he may take out a summons or move the Court by way of motion to vary or discharge the certificate within eight days after the filing thereof. (See Consolidated Orders 35, Rules 51, 52.) It has been held that objections to the chief clerk's finding, should be taken at once in chambers, and before the certificate is made (*Parr v. Lovegrove*, 6 W. R. 201); and, as observed in Chap. XI., it is usual to issue a summons at once to remove a name from the list of contributories, and it is also the practice so to issue a summons on other matters and take the question to the Judge without waiting for the certificate.

Should, however, an order be applied for in chambers as to which it is desired to obtain the opinion of a superior Court, the course to be taken is as follows. On the chief clerk expressing an opinion on the question, or without such opinion if the parties agree, the suitor should get the matter or special summons at once adjourned to the Judge in chambers or in Court, the general practice

being, that if more than one counsel is to attend, the matter is adjourned into Court, but V. C. *Stuart* will not hear any counsel in chambers. The matter having thus been brought before the Judge personally, the appeal lies from his order, whether made in chambers or in Court, to the Lord Chancellor or Lords Justices. The order is drawn up in chambers, unless directed by the Judge to be drawn up by the registrar. If the matter has been decided in Court, and the order is to be drawn up in chambers, the registrar will give a note of the terms of the order made, to the chief clerk upon the application of the solicitor, and the order is drawn up accordingly.

Appeal to Court above.

The time for appealing against an order is three weeks after it has been made, unless such time is extended by the Court of Appeal, but it is sufficient if notice of the appeal is given within such three weeks. The time runs during the Vacation. This is provided for by the following section of the Act:—

Time.

124. Rehearings of and appeals from any order or decision made or given in the matter of the winding up of a Company by any Court having jurisdiction under this Act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given, according to the practice of the Court appealed from, unless such time is extended by the Court of

Appeals from orders.

appeal : Provided that it shall be lawful for the Lord Warden of the Stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the Vice Warden made in the matter of a winding up to the Court of appeal in Chancery, which Court shall thereupon hear and determine such appeal, and have power to require all such certificates of the Vice Warden, records of proceedings below, documents, and papers as the Lord Warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the Lord Warden specified in the Act of Parliament passed in the 18th year of the reign of Her present Majesty, chap. 32, and any order so made by the Court of appeal in Chancery shall be final, without any further appeal.

In *The Risca Coal Mining Company* (10 W. R. L. C. 701), it was decided that the order is made on the day it is pronounced, not on the day it is dated, and the time for appealing, therefore, begins to run from the former day. It may here be remarked, that sect. 99 of the Winding up Act, 1848, which limited the time for appealing against any order or proceeding before the Master, to fourteen days, is not re-enacted.

Motion.

The appeal is made by way of motion to reverse or vary the order, or by petition of appeal to the Lord Chancellor. A motion is the usual course ; it is set down for hearing by the registrar at the order of course seat in the registrar's office, on production of the order complained of, and a copy of the notice of motion which is filed. The notice must be served on the opposite party two clear days before the day named for hearing. A

Petition of
appeal.

petition of appeal is not usually presented. For

the practice on such a petition, see Smith's Chancery Practice, p. 483, and Morgan's Chancery Acts and Orders, p. 504.

The appeal is placed on the paper of the Lord Chancellor or Lords Justices, accordingly as it may be determined, and is then disposed of.

From the decision of the Lord Chancellor or ^{House of} Lords Justices, an appeal may be made to the ^{Lords.} House of Lords.

By sect. 124, above quoted, it is enacted that ^{Rehearing} no rehearing shall be had, unless notice thereof be given ^{Time.} within the same time as an appeal is to be made, namely, three weeks from the time the order in the matter which is to be reheard is made. A rehearing is obtained upon a petition presented in the same way, and set down for hearing on the same conditions as a petition of appeal.

Except with regard to the time allowed for the purpose, as stated above, the practice on a petition for a rehearing, is the same as in an ordinary Chancery suit, and therefore for more complete details the reader is referred to the Consolidated Order, No. 31, to the 15 & 16 Vict. c. 80, and to Smith's Chancery Practice and Morgan's Chancery Acts and Orders.

The Court has power to review any of its pro- ^{Reviewing} ceedings upon an application supported by fresh ^{decisions.} evidence, and upon it being satisfactorily shewn that the evidence could not have been ad-

duced earlier, and had come to the knowledge of the applicant since the proceeding which it is sought to review was taken. The application is by summons supported by affidavit. By rule 73 the power of the Court to review its proceedings is unaffected by the rules. In *Crossfield's Case* (2 De Gex M. & G. 128), it was held that the Master had jurisdiction to place upon the list of contributories a person whom upon the former hearing he had excluded from it without any new facts being brought before him. In *Hopkins' Case, Re Southampton Boat Company* (33 L. J. 1864, Bankruptcy, 40), the Commissioner of the Court of Bankruptcy having settled upon the list of contributories the name of a man who was dead before the date of the order to wind-up, the Lord Chancellor held that the Commissioner had jurisdiction to rehear the case, and to correct the list by striking out the name of the dead man. Where one of a class of persons is struck off the list of contributories the Court will strike the rest of the class off after the time for appealing has expired. (*Re National Assurance and Investment Association, Munday's Case*, 31 Beav. 206.)

CHAPTER XV.

AS TO EVIDENCE—EXAMINATION OF WITNESSES, ETC.

The following sections and rules are the express enactments on this subject.

Sect. 11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Stamp, signature, and effect of memorandum of association.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all monies payable by any member to the Company, in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company, and in England and Ireland to be in the nature of a specialty debt.

Stamp, signature and effect of articles of association.

18. Upon the registration of the memorandum of associ-

Effect of registration.

ation, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the Company in the event of the same being wound up as is hereinafter mentioned: A certificate of the incorporation of any Company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

31. A certificate, under the common seal of the Company, specifying any share or shares of stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Register to
be evidence.

37. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Evidence of
proceedings.

67. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all Acts done by such directors, managers, or liquidators shall be valid,

notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

The books of the Company to be evidence.

154. Where any Company is being wound up, all books, accounts, and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

115. The Court may, after it has made an order for winding up the Company, summon before it any officer of the Company or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade dealings, estate, or effects of the Company: and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the Company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination—nevertheless, in cases where any person claims any lien on papers, deeds or writings, or accounts produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up, to determine all questions relating to such lien.

Power of Court to summon persons before it suspected of having property of Company

117. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Examination of parties by Court.

125. In all proceedings under this part of this Act, all Courts, Judges, and persons judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the Registrar of the Court of the Vice Warden of the Stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or

Judicial notice to be taken of signature of officers.

Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of the Vice Warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act, or any official copy thereof.

Special commissioners for receiving evidence.

126. The Commissioners of the Court of Bankruptcy and the Judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in any part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the Company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production and delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy, judge of a county court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding up the Company has; and the examination so taken shall be returned or reported to such last mentioned Court in such manner as it directs.

Court may order the examination of persons in Scotland.

127. The Court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the Company or not, in regard to the estate, dealings, or affairs of any Company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the Company, so far as the Company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the

county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the Court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the Court, and suspend the examination of such witness until such objection has been disposed of by the Court.

128. Any affidavit, affirmation, or declaration required to be sworn or made, under the provisions or for the purposes of this part of this Act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions, and all Courts, Judges, justices, commissioners, and persons acting judicially, shall take judicial notice of

Affidavits, &c., may be sworn in Ireland, Scotland, or the colonies, before any competent Court or person.

the seal or stamp or signature (as the case may be) of any such Court, Judge, person, consul, or vice consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

Penalty of perjury.

169. If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding up of any Company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

156. Where an order has been made for winding up a Company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Rules.

Rule 58. Every contributory of the Company and every creditor thereof whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such file [of proceedings in the winding up] free of charge, and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three halfpence per folio of seventy-two words; and such file shall be produced in Court or before the Judge and otherwise as occasion may require.

Admission of Documents.

54. Any party to any proceeding in Court or chambers relating to the winding up of a Company may, by notice in writing in the Form, No. 6, in Schedule N. to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the Judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in

cases where the omission to give such notice has been, in the opinion of the Taxing Master, a saving of expense.

Affidavits.

55. Where an order shall have been made for the winding up of any Company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the Judge shall otherwise direct.

We find as a starting point on this subject that the members are bound by the memorandum, and articles of association of the Company, that the certificate of the registrar of the incorporation is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with, and that a certificate of shares or stock is *prima facie* evidence of the title of the party named therein. The books of the Company, as between the contributories are also *prima facie* evidence of the truth of all matters purporting to be therein recorded. The books required by the Act to be kept by a Company are: First a register of shareholders; (section 25.) Second, an annual list of the members is to be entered in the register; (section 26.) Third, a register of mortgages; (section 43.) Fourth, a register of directors or managers (in the case of a Company not having a capital divided into shares; (section

Memorandum and articles.

Books.

45.) And fifth, a minute book of the directors and general meetings ; (section 67.) In addition to these there are usually the directors' attendance book, and share ledger, and all the customary books of account of a Company. It will be seen upon referring to sect. 67 that the minutes of meetings require to be signed in manner therein mentioned to make them evidence.

The books and papers may be inspected by the creditors and contributories on having the leave of the Court. The file of proceedings in the winding up may be inspected by a contributory or a creditor whose debt has been allowed (rule 58.) The official liquidator, contributory or creditor may obtain an affidavit as to documents in the possession, custody, or power of each other, and the production thereof. There seems no express authority for this in the Act, except that the general practice of the Court is to apply. (See practice in Morgan's Chancery Acts and Orders, pp. 168 and 589. See Form of Order in Appendix.) The deponent cannot be cross-examined on this affidavit. (Morgan, p. 192.) As the Court may examine the parties on interrogatories, particulars of documents might be obtained by that means. (Sect. 117, *supra*.)

File at registrar's office.

It should next be remembered that all the documents filed at the office of the Registrar of Joint Stock Companies are originals or certified copies under the seal of the Company, and

that the production thereof may be obtained on a summons or subpoena issued for the purpose, and as they are public documents upon being proved to come from the proper custody are evidence of the matter therein contained as against the parties or Company returning them to the office and the members of the Company, but it is submitted that handwriting and identity of any person who has signed any document must be proved if such person is sought to be affected thereby.

Having thus considered the question of evidence as respects the documents of, or issued, or returned by the Company, we proceed to the general consideration of the subject.

Evidence is gone into upon affidavit, or when Generally. desired *viva voce*. Affidavits are prepared and filed in the same manner as in a Chancery suit. (See Consolidated Order 18, and Order of 5th February, 1861.) But the official liquidator alone is to take an office copy which he is to produce whenever required (rule 55); and to file it on the file of proceedings kept by him. (Rule 58.) The mode of swearing an affidavit is set out in sect. 128.

Any party to the proceeding may call upon any other party to admit documents saving all just exceptions, and in case of a refusal or neglect to admit, the cost of proving such documents may be ordered to be paid by the party refusing or neglecting. No cost of proving any document is Notice to produce.

to be allowed unless notice be given, except where the omission to give such notice would be a saving of expense. (Rule 54. See Form of Notice in Schedule to Consolidated Orders, pp. 187, 188.)

Evidence
viva voce.

If the evidence is desired to be gone into *viva voce* it may be taken either before the chief clerk under 15 & 16 Vict. c. 80, s. 30, Consolidated Order 35, rule 30, and the Act of 1862, ss. 115, 117, or before one of the examiners of the Court, or a special examiner. By 15 & 16 Vict. c. 86, s. 40, any party in any matter depending in the Court, may, by writ of *subpœna ad test.* or *duces tecum* require the attendance of a witness before an examiner of the Court, or before a special examiner appointed for the purpose, and examine such witness orally for the purpose of using his evidence upon any motion, petition, or other proceeding before the Court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause. By rule 22 of the Orders of 5th February, 1861, any party in any matter requiring the attendance of a witness before one of the examiners of the Court or a special examiner for the purpose of being examined, is to give to the opposite party forty-eight hours notice at least of his intention to examine or cross-examine such witness; such notice to contain the name and description of the witness, and the time and place of such examina-

tion, unless the Court shall in any case think fit to dispense with such notice. (See Form.)

An appointment is obtained from the examiner and notice thereof given to the other side as above. A form of subpoena for the attendance of a witness will be found in the schedule to the Consolidated Orders. Counsel attend, and the examination is taken by the examiner who afterwards forwards his notes of the examination to the Record and Writ Clerks' Office, and the official liquidator thereupon obtains office copies thereof for use as evidence. The re-examination of a witness is immediately to follow his cross-examination, and is not to be delayed to a future period. (Consolidated Order 19, rule 8.)

If desired, and a direction is given to that effect by the Judge, a witness may be examined before the Judge or chief clerk (Consolidated Order 35, rule 30, and the Act of 1862, ss. 115, 117), and the attendance of witnesses may be secured by a summons which the chief clerk will issue (see Form); and if necessary the Record and Writ Clerks will issue a subpoena for the purpose upon a note from the Judge. The examination when taken by the chief clerk is transmitted by him to the Record and Writ Clerks' Office, and the official liquidator will take an office copy thereof, and will give a plain copy to the other side. A short hand writer may be employed to

Examination
in chambers.

take the examination. (Consolidated Order 35, rules 29, 30, 31.)

Evidence by
affidavit.

Where the evidence is gone into by affidavit, a notice of filing the affidavits at the Record and Writ Clerks' Office is given to the other side, and copies thereof are to be taken by the official liquidator. The deponents may be cross-examined on the affidavits provided notice be given within fourteen days from the filing thereof. (Order of

Cross-exami-
nation.

5th February, 1861, rule 19.) The cross-examination may take place before the Judge in chambers or before one of the examiners of the Court. The chief clerk acts for the Judge, but the witness may demand to be cross-examined before the Judge himself. (*The London and County Assurance Company*, 5 W. R. 794.) Under sect. 40 of the 15 & 16 Vict. c. 86, and the General Orders of the Court, 5 February, 1861, rules 19, 20, 22, any party having made an affidavit to be used, or which shall be used on any claim, motion, petition or other proceeding before the Court, is bound to attend for the purpose of being cross-examined provided notice thereof be given within fourteen days from the filing of the affidavit. Forty-eight hours notice of the appointment for the cross-examination is to be given to the opposite side, and the party who has filed the affidavit may obtain the attendance of the witness on a subpoena issued out of the Record and Writ Clerks' Office.

In chambers a summons is taken out for the

attendance of the witness to be cross-examined on his affidavit, and is served on him or his solicitor forty-eight hours before the return thereof. Before the examiner an appointment is obtained and notice thereof given to the party who filed the affidavit. A subpoena may be issued as above. The cross-examination, when taken, is filed at the Record and Writ Clerks' Office, and copies obtained as above.

The party requiring the attendance of the witness to be cross-examined pays his expences, but the Court may ultimately order them to be borne as it shall think fit.

Under sect. 117 interrogatories may be exhibited for the examination of the witness. The interrogatories are prepared by counsel, and settled by the chief clerk. They are then engrossed as in a suit, and filed at the Record and Writ Clerks' Office, and a copy for service is issued and served. The time allowed to answer them in a suit is usually one month, but should no answer be filed a four-day order for the witness to file it is obtained on notice, and served on him. Thereupon, in default of answering, he is liable to attachment. (See Morgan's Chancery Acts and Orders, p. 147.)

Where affidavits are filed on a petition to wind up or on any special petition to the Court in the matter of a Company being wound up, and it is desired to cross-examine the deponents on such

Interrogatories.

Mode of cross-examination on petition.

affidavits before the petition is heard, the petition is arranged to stand over till after the cross-examination. The examination takes place before one of the examiners of the Court ; counsel attend and the examiner's notes of the cross-examination are filed at the Record and Writ Clerks' Office as before mentioned. If there is no official liquidator the party requiring the cross-examination must take the office copy. Should it be desired, however, to appoint, under 15 & 16 Vict. c. 86, s. 31, a special examiner to take the cross-examination, a party is chosen by counsel on the hearing of the petition, and, if sanctioned by the Judge an order appointing such person is made and drawn up, and the cross-examination is taken before him in the same manner as before the examiner of the Court. His notes thereof are filed by him at the Record and Writ Clerks' Office, and an office copy thereof taken as above mentioned. The party making the affidavit is bound to attend for the purpose of being cross-examined thereon, provided notice be given within fourteen days from the filing of the affidavit. Forty-eight hours notice of the appointment for the cross-examination is to be given to the opposite party, and a subpoena may be issued. (See Form of subpoena, Schedule to Consolidated Orders.) The re-examination of a witness is immediately to follow his cross-examination as before mentioned. The same rules as to the

mode of examination, and as to the power of the Court in case of the refusal of a witness to be sworn or to answer in Chancery, apply to cases under the Winding up Act. Witnesses are entitled to their expences. (See sect. 115, and *Re Northern and Southern Connecting Railway Company, Ex parte Mercer*, 5 De Gex, M. & G. 26.) Leave to examine an alleged contributory was granted by Vice Chancellor Wood. (*Re Esgair Mwyne Mining Company*, 8 W. R. 660.) Should a witness not attend when summoned by the Judge the Court may cause him to be apprehended.

In addition to the above means of taking evidence or of cross-examination, we find that the Commissioners of the Court of Bankruptcy, and the Judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the Commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs in counties in Scotland, are special Commissioners for taking evidence in the matter of the winding up of any Company in England, and the Court may refer the whole or any part of the examination to any person so appointed Commissioner, and such person has the same powers as the Courts in England. In such a case the Court will order in what manner the examination, when taken, is to be returned and filed. (Sect. 126.) A witness in Scotland

may also be examined there by the leave of the Court. (Sect. 127.) As to the examination of debtors to the estate, and other persons having property of the Company in their possession, see Chapter on Assets of the Company. A creditor may be examined.

CHAPTER XVI.

THE ASSETS OF THE COMPANY AND THE REALIZATION THEREOF.

The assets of the Company generally consist of the following particulars, or some of them. Firstly. Debts due from the contributories, or arrears of calls made by the Company. Secondly. Debts due from third persons; (1) Simple contract debts; (2) Specialty debts, and (3) Debts secured by mortgage, legal or equitable. Thirdly, the property of the Company, whether real or personal, stock in trade, &c. Fourthly. Calls to be made under the order to wind up. Fifthly. The books, accounts, and documents of the Company.

One of the first duties of the official liquidator and his solicitor, is to get in and realise these assets (see sect. 98), and it is requisite that the precise character of the debts of the Company should be known, and how payment may be enforced, what course may be taken in settling with the debtors or other parties, and the steps to be pursued on the realization of the property.

It must here be premised, that in the case of an unregistered Company, which has no power to sue or be sued in a common name, or whenever it appears expedient to the Court, the property of

Vesting
order.

the Company may be vested in the official liquidator. Sect. 203 provides as follows :—

Provision in case of unregistered Company.

203. If any unregistered Company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such Company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceedings relating to any property vested in him or them, or any actions, suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the Company and recovering the property thereof.

Form

A form of the order vesting the property in the official liquidator will be found in Appendix.

In Chapter X. we have considered the duties of the official liquidator with regard to the realisation of the assets, but it is proposed in this place to examine the nature of the assets themselves, and any special duties which may have to be performed by the official liquidator or his solicitor relative thereto. We will take the general classes of assets above stated in their order.

Debts due from contributories.

Firstly. Debts due from contributories or arrears of calls made by the Company.

In the case of a limited Company, these debts are payable at once, but in an unlimited Company

they may be set off against any debt due from the Company to the contributory, except against debts due to the contributory as a member in respect of any dividend or profits. In the cases of both limited and unlimited Companies, however, when all the debts of the Company are paid, debts due to the Company may be set off against any subsequent call made upon them. An order may be made (where there is no set off) for payment of debts due from contributories immediately the contributory is settled on the list.

Sect. 101. The Court may, at any time after making an order for winding up the Company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the Company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act; and it may, in making such order, when the Company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any monies due to him as a member of the Company in respect of any dividend or profit.

Power of Court to order payment by debts by contributory.

Provided that when all the creditors of any Company whether limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

By sub-section 7 of sect. 38 it is provided as follows:—

(7). No sum due to any member of a Company, in his character of a member by way of dividends, profits, or

otherwise, shall be deemed to be a debt of the Company, payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

A form of the order for payment of debts by contributories will be found in Appendix.

Under a somewhat similar provision in the Winding up Act, 1848, in a case where the share brokers of a provisionally registered Company, who were also holders of shares, and had signed the Company's deed, borrowed of the directors part of the Company's money to enable them to complete a large purchase of shares in the market, and deposited as security the purchased shares, and some of their other shares; it was held, that the money borrowed was not due from them as members and contributories of the Company, so as to authorize the Master summarily to order them in that character to pay the amount borrowed. (*Cox's Case*, 3 De Gex & S. 180.)

Debts due
from third
persons.

Secondly. Debts due from third persons; (1), simple contract debts, and (2), specialty debts.

Unless paid on application, these debts must be sued for by the official liquidator, after the leave of the Court is obtained for the purpose. The actions are brought in the name of the Company, but the name of the official liquidator of the Company, as official liquidator, may be ordered to be added, so as to make him personally liable for

costs. Power to compromise is given by sect. 160. (See Chap. XVII.)

(3). Debts secured by mortgage, legal or equitable.

The official liquidator may either sue for debts of this nature, or may enforce the mortgage by way of a bill of foreclosure, or for sale, or by acting under any power of sale given in a legal mortgage. In the former case, the leave of the Court must be obtained; in the latter, the same course must be taken as hereafter shewn with regard to the realization of the property of the Company. Mortgages.

Any debtor to the Company may be examined before the Judge (or chief clerk) under section 115, *post*, which, in cases where there is any question as to the debt or the circumstances that are connected therewith, may be found essential.

Thirdly. The property of the Company, whether real or personal. Property
of Company.

On referring to sect. 95, we find that the official liquidator, with the leave of the Court, has power to carry on the business of the Company so far as may be necessary for the beneficial winding up of the same, and to sell the real, and personal, and heritable, and moveable property, effects, and things in action of the Company, by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels.

By rule 32 it is provided as follows :—

Sales of Property.

32. Any real or personal property belonging to the Company may be sold with the approbation of the Judge, in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the Judge shall so direct, by the official liquidator; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the Judge, unless he shall otherwise direct; and the Judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the Court, under the second of the Consolidated General Orders, and may, on any sale by public auction, fix a reserved bidding; and unless on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchasers into the Bank of England, to the account of the official liquidator of the Company.

Pursuant to this rule the property is to be sold in two ways; first, as in case of a sale under a decree or order of the Court in a suit, or secondly, by the official liquidator.

Sale by
Court.

(1st.) A sale under a decree or order of the Court in a suit.

The outline of the proceedings on a sale by auction is as follows. The property to be sold is, in the first instance, verified by affidavit of a competent person, which sets out the short particulars thereof, as to the locality, tenure, quantity, tenancy, &c. The solicitor having the conduct of the sale prepares the abstracts of title, and verifies them

by affidavit as correct (see Cox's Forms), and he also prepares the particulars of sale. The latter are submitted to the proposed auctioneer, and settled and verified by him, and if the property is divided into lots, he states the reason for so dividing it. An affidavit of the fitness of the proposed auctioneer is also obtained, and, these preliminaries being complete, an appointment to proceed before the chief clerk is applied for. At such appointment the chief clerk directs the abstracts of title to be laid before one of the conveyancing counsel of the Court to advise as to the title. A direction is given to that effect, which is taken to the registrar's office, and the registrar's chief clerk ballots for the conveyancing counsel, and marks his name on the direction. The abstracts of title are laid before the counsel appointed, and at the same time the solicitor instructs him to prepare the special conditions of sale. When the solicitor has obtained them from the counsel, and cleared up any questions or requisitions which he may have raised or made, the solicitor prepares the formal conditions of sale (see Form), and obtains a further appointment before the chief clerk. A full copy of the proposed particulars and conditions of sale must be left in chambers at the time the appointment is applied for, and when the parties attend before the chief clerk he fixes the day of sale, and settles the particulars and conditions of sale. If a de-

posit has to be paid by the purchaser to the auctioneer, security has to be given by the latter to such amount and by such persons as may be sanctioned by the chief clerk. The chief clerk also fixes the amount of the reserved biddings, and for this purpose requires the proposals for such reserves to be verified by the auctioneer or some other competent person. Particulars of the reserves are sent by the chief clerk to the auctioneer privately. By the conditions of sale a day is appointed by the chief clerk to certify the result of the sale. The certificate is prepared by the chief clerk upon an affidavit of the auctioneer, forms of which are forwarded to him, and on the day named to settle the certificate the parties and the purchasers attend the settlement thereof. This certificate is completed and filed in the same way and at the same time as the certificate on the list of contributories (see Chap. XI.) The solicitor then proceeds with the sale in the usual way (see Form of Outline of Conveyance or Assignment); and when all is ready for completion, the purchaser issues a summons for leave to pay his purchase money, as pointed out in the conditions of sale, but before doing so he must accept the title of the vendors to the property. Under the winding up of a Company, the conditions of sale, unless the property is very small, will direct payment of the purchase money into the Bank of England, to the account of the official liquidator of the

Company. If the property is small, and the Court so orders, the purchase money may be paid to the official liquidator personally. For the practice of the Court of Chancery as to reopening the biddings, and in case of a subsequent sale by the purchaser at a profit before the certificate is settled, and for more extended details of the above outline, see Morgan's Chancery Acts and Orders, 3rd ed., p. 149.

On a sale by private contract, under a decree of the Court, the client of the solicitor having the conduct of the sale, enters into a conditional agreement with the proposed purchaser, subject to the sanction of the Court, and this being duly signed the solicitor issues a summons for leave to carry it into effect. The application must be supported by an affidavit that the proposed sale is beneficial, and by an affidavit verifying the execution of the agreement.

If the sale is sanctioned, an order is drawn up according to the summons.

(2nd). Sale by the official liquidator.

If the Court so directs the official liquidator may sell and dispose of any of the real or personal property of the Company without any supervision, and in the case of moveable articles of small value this may be allowed, but it would seem that all property of substantial value should be sold either as under a decree of the Court, or

Sale by official liquidator.

under such special directions as contained in the latter part of rule 32. Those directions, and the course to be pursued on the sale are embodied in the above outline of a sale under the decree of the Court.

Calls. Fourthly. Calls to be made under the order to wind up.

The proceedings on making a call, and for recovering payment thereof, are fully set out in Chapters XII. and XVIII. Power to compromise is given in sect. 160, Chap. XVII.

Fifthly. The books, accounts and documents of the Company. These are so far assets of the Company as being property the value of which, in the winding up, is obviously great, though in themselves but of little value. Under sect. 100, the Court, after the order to wind up is made, may make an order directing any agent or officer of the Company having the books and papers belonging thereto in his possession, to deliver them to the official liquidator (see Form.) When the Company is wound up they are to be disposed of as set out in sect. 155. (See Chap. XXII.)

Generally.

General provisions.

Having thus considered separately each of the items of assets mentioned at the beginning of this Chapter, it remains to point out some general provisions applicable to all in the course of realization.

By the following sections of the Act it is provided:—

100. The Court may, at any time after making an order for winding up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent, or officer of the Company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled.

Power of Court to require delivery of property.

115. The Court may after it has made an order for winding up the Company, summon before it any officer of the Company or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the Company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the Company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended; and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Power of Court to summon persons before it suspected of having property of Company.

117. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person and require him to subscribe the same.

Examination of parties by Court.

118. The Court may, at any time before or after it has made an order for winding up a Company, upon proof being given that there is probable cause for believing that any

Power to arrest contributory about to

abscond, or
to remove
or conceal
any of his
property.

contributory to such Company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of
Court cumu-
lative.

119. Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

The first of the above sections enables the Court to order any of the persons therein named, who may have any money or property of the Company in their possession, to pay, deliver, convey, surrender or transfer it to the official liquidator. (See, as to production of documents on affidavit, *ante*, Chap. XV.)

By sects. 115 and 117, the Court may summon before it any debtor, contributory, or other person capable of giving information as to the trade, dealings, estate or effects of the Company, or any person known or suspected to have in his possession any of the effects of the Company, and examine them thereon, and also order them to produce any books, papers, deeds, writings, or documents in their custody or power, relating to the Company, whether they have any lien thereon or not, but without prejudice to such lien, if any ;

and the examination may be either *viva voce* or by interrogatories; sect. 117. (See Form of Summons for attendance of a person to be examined.) This provision is a most important aid to the official liquidator, and assimilates the practice in winding up to that in bankruptcy. Where documents or papers are held by adverse parties upon which a lien is claimed, the Court has power, under sect. 115, to determine all questions relating to such lien, and will either order the amount for which the lien is claimed to be paid, or the papers to be delivered to the official liquidator (sect. 100.)

Sect. 118 enables the Court, either before or after an order to wind up has been made, to arrest a contributory who is about to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or to seize his books, papers, moneys, securities for money, goods and chattels. To justify the Court in such a step, it would appear that there must be distinct evidence that there is probable cause for believing that he intends to abscond or to remove or conceal any of his property for the purpose aforesaid.

The Court having power under the winding up to make the same order in Chambers as in Court, it is apprehended the order under sect. 118 may be made on an *ex parte* application in Chambers, and the order drawn up there.

All the powers vested in the Court by the Act of 1862 are cumulative, and go in aid of all the other powers subsisting at law or in equity.

Compromise. By sect. 160 power is given to the official liquidator, with the sanction of the Court, to compromise any debt, call, or liability. (See Chap. XVII.)

After an order to wind up, and during the vacancy of the office of official liquidator, all the property of the Company is to be deemed to be in the custody of the Court. (Sect. 92.)

Attention should here be drawn to sect. 157, which provides as follows:—

**Assignee
from Com-
pany.**

157. Any person to whom any thing in action belonging to the Company is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

The power for Companies to refer to arbitration under the Railway Companies Arbitration Act, 1859, may possibly come into use on the winding up. (See sects. 72 and 73.) A copy of the Act is set out at the end of this work.

CHAPTER XVII.

COMPROMISE OF DEBTS OR CALLS, ETC.

The official liquidator may, with the sanction of the Court, settle a general scheme of liquidation, or compromise any debts or calls. See the following sections of the Act.

Sect. 159. The liquidators may, with the sanction of the Court, where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the Company, or whereby the Company may be rendered liable.

Scheme of liquidation may be sanctioned.

160. The liquidators may, with the sanction of the Court, where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding up of the Company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to

Power to : compromise.

take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Rule 49. Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the Company, shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the Company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum, signed by the chief clerk of the Judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

50. The direction or sanction of the Judge for any other proceeding or act to be done by the official liquidator shall be obtained upon summons, and an order shall be drawn up thereon unless the Judge shall otherwise direct.

The exercise of the power to pay any classes of creditors in full or arrange with them will depend upon general questions affecting either their right to payment, the state and character of their debts, or the assets of the Company. Any compromise with a creditor or person claiming to be a creditor, or the contributories, however, will be governed by the particular circumstances of each case.

Sanction of
Court.

Every compromise or arrangement must have the sanction of the Court, to be obtained on a summons supported by affidavit. In the case of disputed claims, the circumstances attendant upon such claims will be the desiderata governing the compromise, but where the debtor or contributory is indebted beyond question, then any compromise

will depend upon the state of the pecuniary affairs of the debtor or contributory. Where a compromise is submitted to the official liquidator, he will require it to be supported by an affidavit of the debtor or contributory setting out the particulars of his property and his liabilities should he allege himself to be unable to pay. A sketch of this affidavit will be found in the Appendix. The official liquidator may cross-examine upon this affidavit within fourteen days from the filing thereof, but if he is satisfied that the proposal is beneficial to the Company, an agreement to compromise is entered into subject to the approval of the Judge. (See Form.) A summons for liberty to compromise is then taken out by the official liquidator, and is supported by an affidavit by the official liquidator. (Rule 49.) The Court, in considering the application, acts upon the principle that a fair and just offer, having regard to the state of the liabilities of the debtor, ought to be accepted, and that it is not bound to extract the last shilling from the debtor for the sake of benefiting the Company at the expence of his other creditors, or at the risk of driving the debtor into bankruptcy.

It will be sufficient for the sanction of the Judge to the agreement for compromise to be signified by a memorandum in writing on the agreement (see Form). No order is necessary unless any

Memorandum.

party expresses his intention to appeal from the decision of the Judge on the application.

No compromise will be entertained by the Court without all the circumstances being disclosed. (*Re Northumberland and Durham Bank, Ex parte Tolly*, 8 W. R. 713.)

CHAPTER XVIII.

PROCEEDINGS TO ENFORCE PAYMENT, ETC.

From the preceding Chapters it will have been seen that for the purpose of obtaining payment of any money due to the Company before the order to wind up, or of calls made after such order, or for the purpose of obtaining possession of any property belonging to the Company, an order must be made for payment or delivery of the same, as the case may be. We have here to consider how such an order may be enforced in the event of it not being obeyed. It is enacted as follows by sect. 120 of the Act.

120. All orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such Court, and for the last mentioned purposes the jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

Power to enforce orders.

The proceeding to enforce an order of the Court of Chancery is as follows.

As the order for payment of money or calls,

Service.

or delivery of property, directs such payment or delivery within a limited time after service, or by a day certain, a copy thereof should be served personally on the person who is required to obey the same, with the following indorsement thereon : " If you, the within named A. B., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant at Arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order." (Consolidated Order 23, rule 10.) No demand of payment or delivery however is necessary (Consolidated Order 29, rule 1.)

Should the official liquidator be unable to serve the order by reason of the party on whom it is made avoiding service, substituted service on his solicitor, or on some other person, will be directed by the Court upon an *ex parte* application supported by a satisfactory affidavit. (See Morgan's Chancery Acts and Orders, p. 510.)

Execution is issued on proof of service of the order, and of nonpayment of the amount ordered to be paid : see Forms. There are three ways of enforcing a money order. 1st. By *fi. fa.* 2nd. By *elegit*; and 3rd. By attachment and sequestration. Any order which may not be for payment of money, or the attendance of a wit-

ness to be examined, may be enforced by attachment and sequestration.

1st. and 2nd. By *fi. fa.* or *elegit*.

Fi. fa. or
elegit.

In order to enforce a money order after it is properly served, and after the expiration of one month from the entry of the order, the date of which will be marked by the entry clerk in the Registrar's office, a *fi. fa.* may be issued directed to the sheriff, authorizing him to levy on the goods of the debtor for the amount due, or an *elegit* may be issued directed to the sheriff to seize the lands or houses, &c., of the debtor until the sum for which the writ is marked is levied. If upon the return of the *fi. fa.* it appears that the sheriff has seized but not sold the goods, a writ of *venditioni exponas* may be issued. (See Consolidated Order 29, rules 6 to 10, and Forms of writ in Schedules F. and G. to such Order.) In the case of a beneficed clerk without goods or chattels, or any lay fee, a writ of *fieri facias de bonis ecclesiasticis* and of *sequestrari facias*, directed to the Bishop, may be issued. (Consolidated Order 29, rules 11, 12 and 13.)

3rd. By attachment and sequestration.

Attachment
or sequestra-
tion.

Upon an affidavit of personal service of the copy order with the memorandum indorsed thereon, or of the subpoena or summons for the attendance of a witness within due time, and of non-payment or non-attendance, a writ of attachment against the person upon whom the order is served

may be issued, and in case the person taken or detained remain in custody without obeying the order, upon the sheriff returning that he is so taken or detained, or in case the sheriff should return *non est inventus*, a commission of sequestration may be issued. In either case also, an order for the Serjeant at Arms to arrest the party may be issued. (Consolidated Order 29, rule 3.)

Where a party was abroad, the Court allowed a sequestration to issue without a writ of attachment preceding it. (*Re East of England Bank*, V. C, Kindersley, 13 W. R. 128.)

Upon due service of an order for delivery of possession, a writ of assistance may be issued. (Consolidated Order 29, rule 5 ; see also Consolidated Order 30.)

Peer.

If a person having privilege of peerage or of Parliament does not obey an order duly served on him with the indorsement, an order for sequestration *nisi* must be obtained on a motion as of course, and a copy of the order served personally on the person privileged. If it cannot be served, the Court upon motion, of which notice must be given, may allow substituted service. If no cause is shewn within the time fixed by the order, it is made absolute upon a motion as of course, and the writ of sequestration issues.

Married woman.

No process can be issued against a married woman ; but if she has separate estate proceedings must be taken in Chancery to charge it with

payment of the amount due from her. If she has not separate estate the husband is generally liable.

The writs when returned by the sheriff or Return. bishop, are to be delivered to the solicitor by whom they were respectively sued out, and thereupon filed in the Record and Writ Clerks' Office.

Any order made in England may be enforced Enforcing orders elsewhere. in Scotland or Ireland, and orders made in the latter places may be enforced in England. See the following sections.

122. Any order made by the Court in England for or in the course of the winding up of a Company under this Act shall be enforced in Scotland and Ireland in the Courts that would respectively have had jurisdiction in respect of such Company if the registered office of the Company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the Courts that are hereby required to enforce the same; and in like manner orders, interlocutors, and decrees made by the Court in Scotland for or in the course of the winding up of a Company shall be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding up a Company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such Company if the registered office of the Company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as, if such order had been made by the Court required to enforce the same in the case of a Company within its own jurisdiction.

123. Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, Mode of dealing with orders to be enforced by other Courts. as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence

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of such order, interlocutor, or decree having been made, and thereupon such last mentioned Court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree, in the same manner as if it were the order, interlocutor, or decree of the Court enforcing the same.

An order made in Scotland, having been entered in the Registrar's office of the Court here, was enforced in England, upon the application of the official manager. (*Re Western Bank of Scotland*, 8 W. R. L. C. 1.)

CHAPTER XIX.

ON ADVERTISEMENT, SERVICE OF NOTICE OF PROCEEDINGS, TIME, ETC.

For the sake of convenience it is thought well to repeat in a separate Chapter the provisions of the Orders of November, 1862, as to advertisements, service of notice of proceedings, orders, &c., and the time within which notice must be given of the various steps taken in the winding up.

By rule 53 it is provided that

“When an advertisement is required for any purpose except where otherwise directed by these rules, the advertisement shall be inserted once in the *London Gazette* and in such other newspaper or newspapers and for such number of times as may be directed. The Judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.” Advertisements.

The special directions in the rules relate to the advertisement of the petition to wind up by the Court, or subject to the supervision of the Court (see rule 2, Chap. IV.), and of the order to wind up the Company by the Court, or subject to the supervision of the Court (see rule 6, Chap. VI.), and of the meeting to appoint the official liquidator (Chap. X.) The usual advertisements required on

other matters are mentioned in the progress of this work.

Service.

By rules 63 and 64, it is provided as follows:—

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice or a copy of the summons or order or other proceeding through the post in a prepaid letter addressed to the solicitor of the party to be served (if any) or otherwise to the party himself, at the address entered or last entered (in the appearance book), pursuant to the preceding rule (rule 62), or if no such entry has been made then, if a contributory, to his last known address or place of abode, and if a creditor to the address given by him pursuant to the foregoing rule (20), and such notice or copy summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office.

64. No service under these rules shall be deemed invalid by reason of the Christian name or any of the Christian names of the person on whom service is sought to be made has been omitted or designated by initial letters in the list of contributories, or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the Judge is satisfied that such service is in other respects sufficient.

It will be observed that the provisions of rule 63 are very important, and absolve the official liquidator from taking any notice of returned letters, provided they are properly addressed as directed in such rule.

Time.

Time.

The times required for service &c., are as follows:—

A petition to wind up by the Court, or subject to the supervision of the Court, or any other

special petition, is to be served two clear days. (Consolidated Order 34.)

The advertisement of the petition to wind up by the Court, or subject to the supervision of the Court, is to be inserted seven clear days before the day of hearing. (Rule 2.)

The affidavit in support of the petition is to be filed within four clear days after presenting the petition. (Rule 4.)

The advertisement of the order is to be inserted in the *London Gazette* within twelve days from the date of the order. (Rule 6.)

The order is to be carried into chambers within ten days after it has been passed and entered. (Rule 7.)

A summons must be served two clear days before its return. (Consolidated Order 35, rule 7.)

The advertisement of the meeting to appoint an official liquidator must be inserted so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed. (Rule 9.)

Notices to creditors to come in and prove their claims are to be served four clear days before the day fixed for their so doing. (Rule 24.)

The notices to settle the list of contributories are to be served four clear days before the day appointed to settle the list. (Rule 30.)

The summons for a call is to be served four clear days. (Rule 33.)

The notices of any meeting under the 91st or 149th sections of the Act are to be served seven clear days. (Rule 45.)

A summons to take the opinion of the Judge upon any certificate of the chief clerk must be issued within four clear days from the signature thereof by the chief clerk. (Consolidated Order 35, rule 49.)

A summons to vary or discharge the certificate must be issued within eight days from the filing of the certificate. (Consolidated Order 35, rule 52.)

The time for appealing against any order is three weeks after the order complained of has been made, unless the Court of Appeal shall enlarge the time. (Section 124.)

By rule 73 the Court has power to enlarge or abridge the time for doing any act or taking any proceedings. (See also Consolidated Order 37.)

CHAPTER XX.

COSTS.

The following sections and rules relate to the question of costs.

Sect. 86. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any *interim* order or any other order that it deems just.

110. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges, and expenses incurred in winding up any Company in such order of priority as the Court thinks just. Court to order costs.

Rule 70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the 1st Schedule hereto, unless the Court or Judge shall otherwise specially direct.

71. The fees of Court set forth and referred to in the 2nd Schedule hereto, shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders.

Taxation of Costs.

72. Where an order is made in Court or chambers for payment of any costs, the order shall direct the taxation thereof by the Taxing Master; except in cases where a gross sum in lieu of taxed costs is fixed by the order in accordance with the 37th rule of the 40th of the Consolidated General Orders.

The Schedule referred to in rule 70.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

For preparing and drawing up every order made

at Chambers, and attending for same, and at the Registrar's Office to get same entered .	£	s.	d.
	0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4
For other duties performed, such of the fees on the higher scale authorized by the 2nd rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.			
Where under such regulations a fee of three guineas may be allowed for attending any summons or other appointment at the Judge's Chambers, the same may be increased to any sum not exceeding five guineas.			
The fee of 2s. 6d. allowed by such regulations for notices and services, shall be reduced to 1s. 6d., where the service may be effected as provided by the above rule 63.			
The usual charges relating to printing shall be allowed in lieu of copies for service where the fee for copies would exceed the charges for printing, and amount to more than 3l.			

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.

	£	s.	d.
For every summons	0	3	0
For every order drawn up by the chief clerk .	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6

In the Registrars' Office.

For every order made in Court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the Examiners' Office.

The same Fees as those directed to be paid and collected in such Office by the 2nd Rule of the 39th of the Consolidated General Orders, and the Regulations subjoined thereto.

Security.

In the Record and Writ Clerks' Office, and Report Office.

Such of the Fees directed to be paid and collected in such Office by the 2nd rule of the 39th of the Consolidated General Orders, and the Regulations subjoined thereto, as are applicable.

In the Taxing Office.

The same Fees as those directed to be paid and collected by the 2nd rule of the 39th of the Consolidated General Orders, and the Regulations subjoined thereto.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition £1 0 0

In the Office of the Secretary at the Rolls.

For every petition 1 0 0

By sect. 86, the costs of a petition to wind up a Company are entirely in the discretion of the Court; and on looking into the authorities we find that the following questions have been decided :—

Cost of petition.

When the petitioner was out of the jurisdiction of the Court, he was ordered as in other Chancery proceedings, to give security for the costs occasioned by his petition. (*Re Royal Bank of Australia, Ex parte Latta*, 3 De Gex & S. 186.)

Where two or more petitions to wind up are presented, if presented *bonâ fide*, the Court will

direct payment of the costs thereof out of the estate of the Company. (*Re Leeds Banking Company*, unreported.) In the matter of *The General Indemnity Assurance Company* (5 W. R. 465), V. C. Wood allowed the costs of two out of three petitions, and intimated that in cases where more than one petition is presented the costs of one petition alone will be allowed, unless circumstances were clearly shewn for the presentation of another. Where the petition failed by reason of its not being properly entitled, the petitioner had to pay the costs. (*Re South Essex Gas Light and Coke Company*, 6 W. R., V. C. K. 234.) The costs of an unsuccessful opposition to a petition were ordered to be borne by the parties opposing. (*Re Bosworthen Mines*, 28 L. T. 352.) Where a person successfully opposed his being placed on the list of contributories he was held entitled to costs out of the estate. (*Re Wrysgare Slate and Slab Quarry Company*, 7 W. R. 335.) Where he failed he was ordered to pay costs. (*Re Birkbeck Life Assurance Company*, 13 W. R. 380.) Where innocent parties partly succeeded in their claim and partly failed, it was ordered that they should neither pay nor receive costs. (*Re London and Counties Assurance Company, Wood and Brown's Claim*, 10 W. R., V. C. K. 662.)

On a petition that a compulsory winding up might be stayed and the Company be wound up under the supervision of the Court, the official

liquidator is not entitled to appear. (*Re General International Agency Company*, 13 W. R. 363.)

On a petition that a Company might be wound up under the supervision of the Court and the voluntary winding up stayed, the liquidator was allowed his costs. (*Re East Dyliffe Lead and Copper Mining Company, Limited*, and *Re Snowbrook Silver Lead Mining Company, Limited*, both unreported, V. C. Stuart, 1864.) See Collection of Cases on Costs; Lindley on Partnership, vol. 2, pp. 1142 to 1148.

A limited Company may be ordered to give security for costs of any action it may commence, and it is apprehended that the enactment would apply in the case of an action brought by the official liquidator in the name of the Company, unless his name is used in the action in such a way as to make him liable. By sect. 69, it is provided as follows :—

69. Where a limited Company is plaintiff or pursuer in any action, suit, or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the Company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Security for costs.

Provision as to costs in actions brought by certain limited Companies.

Various precedents of costs will be found in the Appendix.

A form of an order for taxation and payment of costs is set out in the Appendix, but they are at times taxed on request from the chief clerk.

CHAPTER XXI.

ADJUSTING RIGHTS OF CONTRIBUTORIES INTER SE.

When all the creditors of the Company have been paid, and also all the costs of winding up the Company, the rights of the contributories *inter se* have to be arranged and settled. Accordingly we find that it is provided as follows by sect. 109 :—

Court to adjust rights of contributories.

109. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

For this purpose the Court has power, by sect. 102, set out in Chapter XII., to make calls.

As before remarked in Chapter XI. various questions may arise between the contributories *inter se* that cannot as between the contributories and the creditors. The whole body of contributories having, through the officers of the Company, contracted debts in carrying on the Company, it has been held that, except in some few cases, no matter under what circumstances the contributory had been induced to take his shares, he is equally liable with the other contributories to pay the debts, and accordingly he has to pay those debts in common with the others. In the case of an unlimited Company, however, and also in the case of a limited Company where all the unpaid up capital has not been absorbed by the debts, further

calls may be made for the purpose of adjusting the rights of the contributories *inter se*, and in such circumstances questions of contract or misrepresentation may be entertained. No case is reported in which such questions have arisen on adjusting the rights of the contributories *inter se*, but cases have occurred where the Court, under the particular circumstances therein existing, has sanctioned a call on a particular class of shareholders in exclusion of another. (See Chap. XII.)

By the Act of 1862 a greater necessity has arisen for finally adjusting the rights of the contributories *inter se*, inasmuch as in a limited Company a contributory who happens to be a creditor on an independent contract cannot set off his debt against a call until all the creditors are paid, and consequently after that event a further call must in justice be made to pay such debt or such portion thereof as does not fall to the share of the particular contributory.

It may also happen that calls may be made under the authority of the Act which with the other assets collected are more than sufficient to pay the debts, in which case, and also in the case of the assets alone being more than sufficient to satisfy the creditors, a return has to be made to the contributories. In that event all the contributories who have not paid their calls must either pay the same or be debited therewith in account before taking any part of the return ordered.

CHAPTER XXII.

STAYING PROCEEDINGS AND TERMINATION OF
WINDING UP.

The Court has power at any time to stay the proceedings under an order to wind up.

Power of
Court to stay
proceedings.

Sect. 89. The Court may at any time after an order has been made for winding up a Company, upon the application by motion of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

The power vested in the Court under this section is entirely discretionary, and every application will depend upon the circumstances of each particular case. (See Table of Cases for some instances where the Court has refused to interfere.)

Where an order had been made to stay the proceedings without proper notice, it was held, notwithstanding, that a solicitor or claimant had a right to proceed with the taxation of costs in the matter. (*Re Dover, Deal and Cinque Ports Railway Company, Ex parte Hook*, 5 De Gex, M. & G. 743.)

A Company which is ordered to be wound up under the Act of 1862 is not thereby dissolved,

but retains its existence as a Company for the purpose of the proceedings; accordingly, when the winding up is completed, an order dissolving the Company has to be made by the Court.

The proceedings for obtaining this order are set out in the following rules and sections.

Proceedings
to obtain
order.

Termination of Winding Up.

Rule 65. Upon the termination of the proceedings in chambers for the winding up of any Company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the Court or Judge shall direct, the recognizance entered into by the official liquidator and his sureties may be vacated.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the Judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the Company have been completely wound up; and in case the Company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the Judge for an order that the Company be dissolved from the date of such order.

67. When the proceedings for winding up any Company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerks' Office.

Sect. 111. When the affairs of a Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of the Company.

113. If the official liquidator makes default in reporting to the registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he

Penalty on
not reporting
dissolution
of Company.

shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

As to disposal of books of accounts and documents of the Company.

155. Where any Company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the Company and of the liquidators may be disposed of in the following way; that is to say, where the Company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the Company has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company, or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

The practice on passing the official liquidator's account will be found in Chapter X., and the certificate of the chief clerk that all the affairs of the Company have been wound up will be prepared and completed in the same way as the certificate on the list of contributories. (See Chap. XI.)

The order dissolving the Company may be made in chambers. It has to be reported by the official liquidator to the Registrar of Joint Stock Companies under a penalty of 5*l. per diem*. (See Form of Certificate of Chief Clerk and Order.)

Before the Company is dissolved the books, accounts and documents belonging thereto have to be disposed of in manner set out in sect. 155.

PART II.

CHAPTER I.

VOLUNTARY WINDING UP OF A COMPANY.

The following are the express provisions of the Act of 1862, and rules of 11th of November, 1862, relating to this subject.

Voluntary Winding up of Company.

Sect. 129. A Company under this Act may be wound up voluntarily, Circumstances under which Company may be wound up voluntarily.

- (1). Whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily :
- (2). Whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily :
- (3). Whenever the Company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same :

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

51. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution

has been passed by a majority of not less than three fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy (in cases where by the regulations of the Company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Commencement of voluntary winding up.

130. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing such winding up.

Effect of voluntary winding up on status of Company.

131. Whenever a Company is wound up voluntarily the Company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the Company are wound up.

VOLUNTARY WINDING UP OF A COMPANY. 187

132. Notice of any special resolution or extraordinary resolution passed for winding up a Company voluntarily shall be given by advertisement as respects Companies registered in England in the *London Gazette*, as respects Companies registered in Scotland in the *Edinburgh Gazette*, and as respects Companies registered in Ireland in the *Dublin Gazette*. Notice of resolution to wind up voluntarily.

133. The following consequences shall ensue upon the voluntary winding up of a Company :— Consequences of voluntarily winding up.

- (1). The property of the Company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the regulations of the Company, be distributed amongst the members according to their rights and interests in the Company :
- (2). Liquidators shall be appointed for the purpose of winding up the affairs of the Company and distributing the property :
- (3). The Company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him :
- (4). If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him :
- (5). Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers :
- (6). When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (7). The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator :
- (8). The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :
- (9). The liquidators may at any time after the passing of

the resolution for winding up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :

- (10). The liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves.

Effect of winding up on share capital of Company limited by guarantee.

134. Where a Company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the Company, and to be a specialty debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators.

135. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised ; and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors.

136. Any arrangement entered into between a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

137. Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Powers of creditor or contributory to appeal.

138. Where a Company is being wound up voluntarily the liquidators or any contributory of the Company may apply to the Court in England, Ireland, or Scotland, or to the Lord Ordinary on the bills in Scotland in time of vacation, to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court: and the Court or Lord Ordinary, in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order, interlocutor, or decree on such application as the Court thinks just.

Power for liquidators or contributories in voluntary winding up to apply to Court.

139. Where a Company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account shewing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Power of liquidators to call general meeting.

140. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation, or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if

Power to fill up vacancy in liquidators.

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held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators.

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; the Court may also, on due cause shewn, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding up.

Liquidators on conclusion of winding up to make up an account.

142. As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the Company disposed of; and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects Companies registered in England in the *London Gazette*, and as respects Companies registered in Scotland in the *Edinburgh Gazette*, and as respects Companies registered in Ireland in the *Dublin Gazette*.

Liquidators to report meeting to registrar.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the Company shall be deemed to be dissolved: if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Costs of voluntary liquidation.

144. All costs, charges, and expenses properly incurred in the voluntary winding up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors.

145. The voluntary winding up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

Power of Court to

146. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of

having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up. adopt proceedings of voluntary winding up

Rule 51. Every application under the 137th, 138th, or 141st section of the said Act shall be made by petition or motion, or if the Judge shall so direct, by summons at chambers; and every application under the 167th or 168th sections of the said Act shall be made by petition.

It is proposed to consider the steps in the voluntary winding up of a Company in the same order as those on a winding up by the Court.

1st. What Companies may be wound up voluntarily, and what Court has jurisdiction therein.

All Companies registered under the Act of 1862, or the Joint Stock Companies Acts, may be wound up voluntarily, and re-registration under the Act of 1862 of Companies registered under the Joint Stock Companies Acts is not necessary. The Court to which application in any matter arising in the voluntary winding up has to be made will be the same as on a compulsory winding up. (See Part I.) Companies which may be wound up voluntarily.

By sect. 199 of the Act, clause 2, it is provided that

(2). No unregistered Company shall be wound up under this Act voluntarily or subject to the supervision of the Court.

2nd. The circumstances under which a Company may be wound up voluntarily.

These are defined by sect. 129, and are :—

(1st.) Whenever the period, if any, fixed for

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the duration of the Company expires, or the event, if any, occurs upon which the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily.

(2nd.) Whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily.

Circum-
stances
under which
Company
may be
wound up
voluntarily.

(3rd.) Whenever the Company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

Resolutions.

A special resolution is defined by sect. 51 above set out.

An extraordinary resolution is defined by sect. 129 to be a resolution passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution.

The meeting at which either of the above resolutions is passed must be a general meeting of the Company. It may however be an ordinary general meeting or an extraordinary one, called by the directors at their own option or on the requisition of the members or such number of them as may be provided by the articles of association. The articles will provide for the number of days' notice to be given, and the notice must state the object for which the meeting is called and the business to be transacted thereat, and it may therefore be

well to state here, that if in addition to passing a resolution to wind up voluntarily it is proposed at the same time to appoint a liquidator, the notice must so state; see *post.* . (See Appendix for form of notice of General Meeting for the purpose of passing the resolution to wind up.)

3rd. At whose instance the Company may be wound up voluntarily.

This of course can only be at the instance of the directors and shareholders in the Company, and it is especially to be noticed that the voluntary winding up is not to bar the right of any creditor of such Company to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up. (Sect. 145.) The passing of the resolution to wind up voluntarily bars the right of any shareholder to petition for winding up by the Court.

4th. The effect of the resolution to wind up.

On this head we find, by sect. 131, that the Company is to cease to carry on business except for the purpose of beneficially winding up the same, and no transfers of shares are to be made except transfers made to or with the sanction of the liquidators, and the status of the members of the Company is to be in no way altered, but the Company shall exist with all its corporate powers until it is fully wound up.

Under sect. 138 of the Act application may Staying proceedings.

be made to the Court by the liquidator or any contributory to stay any action which may be brought against the Company or proceeded with after the passing of the resolution to wind up, and the Court will exercise its powers in the same way and according to the same rules as under a winding up by the Court. (See Chapter V., also *Re Life Association of England, Limited*, 12 W. R. 1069, and *Re Keynsham Company, Limited*, M. R., 11 W. R. 926.)

The directors continue in office until the liquidator is appointed.

Fraudulent
preference.

By sect. 164 (see *ante*, Chapter V.) fraudulent preferences by the Company are to be void, and the passing of the resolution for winding up the Company voluntarily is to be deemed to correspond to an act of bankruptcy in the case of an individual trader.

The provisions of sect. 114 as to *lis pendens* do not apply to a voluntary winding up.

Assets.

Where the Company is limited by guarantee, and has a capital divided into shares, any share capital that may not have been called up is to be deemed assets of the Company and to be a specialty debt due from each member to the Company to the extent of any sum that may be unpaid on the shares held by him and payable at such time as may be appointed by the liquidators. (Sect. 134.)

5th. The proceedings under the resolution to wind up.

By sect. 130 of the Act the voluntary winding up is to be deemed to commence at the time of the passing of the resolution authorizing such winding up. Commence-
ment of
proceedings.

By sect. 132 the resolution is to be advertised in the *London Gazette* when the Company is registered in England.

Liquidators are to be appointed by the Company in general meeting for the purpose of winding up the affairs of the Company and distributing the assets thereof. It is to be observed that they are to be appointed in general meeting, of which notice must be given as provided by the articles of association, and the notice must state that the meeting is called for the purpose of appointing the liquidators. Should it not do so the appointment will be invalid. Where, at the general meeting held for the special purpose of winding up a Company voluntarily not only a resolution to wind up was passed but also a resolution appointing a liquidator, of which last resolution no notice whatever had been given, the appointment was held to be invalid. (*Re Stearic Acid Company*, 32 L. J., Ch. 784. See also *Anglo Californian Gold Mining Company v. Lewis*, 9 W. R. 126.) Appointment
of liquida-
tors.

It is conceived that the rules adopted by the Court as to the persons to be appointed liquidators will be followed under a voluntary winding up. (See Chap. X.) Upon the appointment of the liquidators the powers of the directors are to

cease, except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers. One liquidator may be appointed, but if two or more are appointed every power by the Act given may be exercised by such one or more of them as may be determined at the time of the appointment, or in default of such determination by any number not less than two. If, therefore, it is intended to appoint more than one liquidator, the notice convening the meeting for the purpose should (unless the provision in case of default of determination is to apply) state by which of the liquidators the powers are to be exercised.

Delegation
of powers to
creditors.

The Company may, by extraordinary resolution, delegate its power of appointing liquidators and filling up any vacancies to its creditors, or to any committee of its creditors, and also by a like resolution enter into any arrangement respecting the powers to be exercised by the liquidators and the manner in which they are to be exercised, and any act done by the creditors in pursuance of such delegated powers is to have the same effect as if done by the Company. (Sect. 135.) Any arrangement entered into by a Company being wound up voluntarily and its creditors is to be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as mentioned in sect. 137. (See *post*.)

If a vacancy occurs in the office of liquidators appointed by the Company, the Company (subject to any existing arrangement with its creditors), may, in general meeting to be convened by the continuing liquidators if any, or by any contributories of the Company, fill up the vacancy, and such general meeting is to be deemed to be duly held, if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator (if any) or by any contributory of the Company, be determined by the Court. (Sect. 140.) If there is no liquidator the Court may, on the application of any contributory, appoint a liquidator or liquidators, and also on due cause shewn, remove any liquidator and appoint another liquidator to act in the matter. It will be observed that this last mentioned power is not given to the Company but to the Court alone. (Sect. 141.) On a petition to wind up in bankruptcy, where a voluntary winding up was proceeding, Mr. Commissioner Goulburn refused to stay the proceedings under the voluntary winding up, but appointed an additional liquidator. (*Re Llanfrynach Silver Lead Mining Company*, 9 W. R. 500.)

The liquidators, when appointed, are to exercise without the sanction of the Court all the powers given to official liquidators on a winding up by the Court. (See *ante*, Chap. X.) They are to

Powers of
liquidators.

settle the list of contributories and to exercise all the powers given to the Court on settling the same, and the list as settled is to be *primâ facie* evidence of the liability of the persons therein named as contributories.

As soon as the list is settled, the liquidators may make calls upon the contributories for the time being settled on the list to the extent of their liability, for the payment of any sum they may deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expences of winding it up, and for the adjustment of the rights of the contributories *inter se*. In making such call, the liquidators may take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions. (See *Lord Londesborough's case*, Chap. XII.)

The liquidators are then to pay the debts of the Company, and to apply the property of the Company in satisfaction of its liabilities, *pari passu*, and, after so doing, to adjust the rights of the contributories *inter se*, and, unless otherwise provided by the regulations of the Company, to distribute any surplus assets amongst the members, according to their rights and interests in the Company. There does not appear to be any power for liquidators to require debts to be proved by affidavit. The character of debts capable of proof is set out in sect. 158, *ante*, Chap. XIII.

In the exercise of the powers thus given to the liquidators, they should be guided by the same rules and act upon the same principles as those adopted by the Court on a winding up by the Court, as the rights and liabilities of the creditors and contributories are the same in both proceedings for winding up. The books of account and documents of the Company are evidence as between the contributories. (Sect. 154.)

Under sect. 138, the official liquidator or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls or in respect of any other matters, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. The application under the above section is to be made by petition or motion to the Court, or, if the Judge shall so direct, by summons at chambers. (Rule 51. See Form of Summons in Appendix.)

Application
to Court.

The liquidators may summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purpose they think fit, and call a general meeting once a year during the winding up, and lay before the Company their accounts, showing what they have done, and how the winding up has been proceeding. (Sect. 139.) They may also,

Meetings of
Company.

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with the sanction of an extraordinary resolution, enter into any general scheme for liquidation (sect. 159), or compromise all calls and liabilities to calls, debts and liabilities, capable of resulting in debts and other claims. (See sect. 160.)

Arrangement
with credi-
tors.

It is further to be observed, that any Company about to be wound up voluntarily, may enter into any arrangement with its creditors, and such arrangement is to be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors (sect. 136), but any creditor or contributory of the Company may, within three weeks from the completion of such arrangement, appeal to the Court against the same, and the Court may, as it thinks just, amend, vary, or confirm the same (Sect. 137.)

Remunera-
tion of liqui-
dators.

The remuneration of the liquidators is to be fixed in general meetings of the Company (sect. 133, clause 3), and that remuneration, and all costs, charges and expences, properly incurred in the voluntary winding up of a Company, are to be payable out of the assets of the Company in priority to all other claims. (Sect. 144.)

Transfer of
business.

It may very often happen that on the winding up of one Company, its business, or a part thereof, will be taken by another Company, and express powers are given by sect. 161 to enable the liquidators to transfer or sell the business of the Company being wound up in consideration of shares,

policies, or other like interests in the new Company to be distributed amongst the members of the old. Sect. 161 and sect. 162, which provide for the case of a dissentient member, are as follows:—

161. Where any Company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing Company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso, that if any member of the Company being wound up who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such regulation into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the Company is dissolved, and to be raised by the liquidators in such manner as may be determined by

Power for liquidators to accept shares, &c., as a consideration for sale of property of Company.

special resolution: No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the Company, or for appointing liquidators; but if an order be made within a year for winding up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

162. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and "the Company" shall mean the Company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

It will be observed that liquidators can only act with the sanction of a special resolution of the Company (see sect. 51) conferring either a general or particular authority, but having that authority any arrangement into which they enter is binding on the members of the Company wound up, subject, however, to the proviso that any dissentient member may, upon expressing his dissent in writing, addressed to the liquidators and left at the registered office of the Company, not later than seven days after the special resolution is passed, require the liquidators either to abstain from carrying the resolution into effect or to buy

his interest at a price to be determined by agreement or by arbitration under the Companies Clauses Consolidation Act, 1845.

The special resolution above mentioned may be passed antecedently to or concurrently with a resolution to wind up, or for appointing the liquidator, but if an order to wind up by the Court or subject to the supervision of the Court is made within a year, the resolution must be sanctioned by the Court.

The Companies Clauses Consolidation Act, 1845, so far as it relates to arbitration, will be found set out at the end of this Work.

The Company to which the business or property is transferred must have authority under their articles to accept the transfer or sale, and where necessary under such articles, special resolutions enabling the directors to accept such transfer must be passed. Where an amalgamation had taken place under a mistake of law by reason of there being no power to amalgamate, a claim under the contract relating thereto has been disallowed. (*Re Sea Fire Assurance Company, Ex parte Port of London Shipowners' &c. Society*, 6 House of Lords Cases, 401, and *Re Saxon Life Assurance Society, Ex parte Era Assurance Society*, 32 L. J., Ch. 206.)

For the provision as to prosecuting any officer of the Company who has been guilty of any ^{Delinquent} officers.

offence in relation to the Company for which he is criminally responsible, and assessing damages against him, see *post*.

Dissolution
of Company.

When the Company is fully wound up the books and papers thereof are to be disposed of as the Company in general meeting by an extraordinary resolution may direct. (Sect. 155, *ante*, Part I., Chap. XXII.) The liquidator is to make up his account, and thereupon call a general meeting of the Company by advertisement as directed and for the purposes mentioned in sect. 142. He is to make a return of such meeting and of the date at which it was held to the Registrar of Joint Stock Companies. At the expiration of three months from the date of such return the Company is to be deemed to be dissolved. There is a penalty of 5*l.* per diem for not making the return.

CHAPTER II.

WINDING UP SUBJECT TO THE SUPERVISION OF THE COURT.

The following are the sections of the Act relating to this proceeding.

Sect. 147. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Power of Court, on application, to direct winding up, subject to supervision.

148. A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the Court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the Company by the Court.

Petition for winding up, subject to supervision.

149. The Court may, in determining whether a Company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the Company.

Court may have regard to wishes of creditors.

Power of Court to appoint additional liquidators in winding up, subject to supervision.

150. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the Company: The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding up subject to supervision.

151. Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding up, subject to the supervision of the Court shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the Company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding up, subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

152. Where an order has been made for the winding up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may in such last mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

It will be seen on perusing the above sections that this mode of winding up a Company consists

first of a voluntary winding up, and next of the supervision of the Court over such voluntary winding up. By this means the Company has a greater influence over the disposal of its property and the liquidation of its affairs than on a simple winding up by the Court, as the liquidators act under powers (general or express) delegated to them by the Company in general meeting, whilst the aid of the Court can at any time be obtained for the purpose of enforcing calls upon the contributories, and determining any question that may arise in the winding up. Various powers are also given to the Court on a winding up subject to its supervision, which are not given to it on a simple voluntary winding up.

In the first instance the winding up is to be a voluntary one. For the various steps on that proceeding reference will be made to the last Chapter. If in the course thereof it appears necessary to place the proceedings under the supervision of the Court, a petition for that purpose must be presented in the same way as a petition to wind up by the Court. (See Chap. IV.) The Court may make an order on such petition, but in doing so will give liberty for creditors, contributories, or others, to apply to the Court, and will impose such terms and restrictions as it shall think just; sect. 147. (See Form of Order, Appendix.)

The Court may also appoint an additional

Liquidator. liquidator or liquidators, or remove them and fill up any vacancy (sect. 150). The liquidators appointed may, subject to any restriction and without any express sanction of the Court, exercise all the powers conferred in the voluntary winding up, but with this exception, any order made by the Court under this part of the Act is for all purposes, including the stay of actions and suits, to be deemed to be an order for winding up by the Court.

The Court on these proceedings may have regard to the wishes of the creditors and contributories as ascertained at meetings convened pursuant to sect. 149. (See the rules relating to this section, and to sect. 91, p. 38.)

The sections of the Act relating to dispositions after the commencement of the winding up (sect. 153); inspection of books (sect. 156); a general scheme of liquidation (sect. 159); power to compromise (sect. 160); as to certain attachments, sequestrations and executions being void (sect. 163); fraudulent preference (sect. 164), and prosecution of delinquent officers (sect. 167), apply equally to winding up under the supervision of the Court as to winding up by the Court; and reference will therefore be made to Parts I. and III. for the particulars of these sections and the practice thereon.

Practice.

The supervision of the Court is exercised by means of an application by any creditor or contributory, or by the liquidator, either on petition

or motion, or for general purposes on application in chambers upon a special summons. This summons is issued and served in the same manner as in a Chancery suit, and the order made thereon is drawn up in chambers, or by the registrar, if the Judge so directs. In this way applications may be made by the official liquidator to settle any particular contributory on the list, or by any contributory to strike his name off or to put some other contributory on in his place. Applications may also be made by the official liquidator for an order for any contributory to pay the call made on him, but inasmuch as this application is not made till after the time fixed by the liquidator out of Court for payment of the call, the summons will be for the contributory to pay such call within four days after service on him of the order on such application. This order, when duly served with the usual indorsement, may be enforced as any other order of the Court. (See Chap. XVIII.)

The rules of evidence will be the same as on a winding up by the Court.

On the final winding up of the Company, the Court is to direct how the books and papers are to be disposed of. (Sect. 155, *ante*, Chap. XXII.)

CHAPTER III.

THE JURISDICTION OF THE STANNARIES.

It is not within the scope of this Work to consider the cases within the jurisdiction of the Stannaries or the practice on winding up Companies therein.

It may be useful, however, to draw the attention of the reader to the provision that the Court of the Vice Warden of the Stannaries alone has jurisdiction to wind up Companies engaged in working mines within and subject to the jurisdiction of the Stannaries, and that although the Company may be registered under the Act of 1862.

The sections in the Act of 1862 specially relating to the jurisdiction of the Stannaries, and certain powers conferred thereon, are sections 68, 108 and 116.

**Jurisdiction
of Vice
Warden of
Stannaries.**

68. In the case of Companies under this Act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated Companies, but only so far as such jurisdiction or powers are consistent with the provisions of this Act and with the constitution of Companies as prescribed or required by this Act; and for the purpose of

giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the said Court, in causes or matters whereof the Court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants, and summonses required or authorized by the practice of the Court to be served on any Company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the Vice Warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the crown, on such terms and conditions as the Court shall think fit; and all decrees, orders, and judgments of the said Court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the Court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said Court, and the signature of the registrar thereof, shall be judicially noticed by all other Courts and Judges in England, and shall require no other proof than the production thereof: The registrar of the said Court, or the assistant registrar, in making sales under any decree or order of the Court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that behalf.

108. If in the course of proving the debts and claims of creditors in the Court of the Vice Warden of the Stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the Court to be open to question, the Court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said Court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the Court, or to produce documents before the Court; and the Court shall also have power, incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the Company in respect of such

Proceedings
in the Court
of the Vice
Warden of
the Stan-
naries on
proof of
debts.

debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the Vice Warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his Court, or by a common or special jury, before the justices of assize in and for the counties of *Cornwall* or *Devon*, or at any sittings of one of the superior Courts in *London* or *Middlesex*, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties, and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the Judge who tried it makes known to the Vice Warden that he was not satisfied with the finding, or unless it appears to the Vice Warden that, in consequence of miscarriage, accident, or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

Special provisions as to Court of Vice Warden of the Stannaries.

116. If after an order for winding up in the Court of the Vice Warden of the Stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores, or effects on the mine, or on premises occupied by the Company in connexion with the mine, or to which the Company was at the time of the order *primâ facie* entitled, it shall be lawful for the Vice Warden or the Registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the Act passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-two; and any action or issue directed upon such interpleader may, if the Vice Warden think fit, be tried in his Court or at the assizes or the sittings in *London* or *Middlesex*, before a Judge of one of the superior Courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

It will also be found that several of the other sections in the Act apply to the winding up in the Stannaries Court, under the general expression of "the Court."

PART III.

CHAPTER I.

DIRECTORS AND OFFICERS OF COMPANY, PROCEEDINGS AGAINST, ETC.

The following sections relate to the prosecution of delinquent directors or other officers of the Company, whether the winding up is voluntary or by the Court, or under the supervision of the Court.

165. Where in the course of the winding up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands or become liable or accountable for any monies of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Power of Court to assess damages against delinquent directors and officers.

166. If any director, officer, or contributory of any Company wound up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes

Penalty on falsification of books.

or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

Prosecution
of delinquent
directors in
the case of
winding up
by Court.

167. Where any order is made for winding up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators, or the liquidators, (as the case may be,) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the Company.

Prosecution
of delinquent
directors,
&c, in case
of voluntary
winding up.

168. Where a Company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the Company in priority to all other liabilities.

Rule 51. Every application under the 137th, 138th or 141st section of the said Act shall be made by petition or motion, or if the Judge shall so direct by summons at chambers, and every application under the 167th or 168th section of the Act shall be made by petition.

The application under sect. 165, in the case of a Company winding up voluntarily, would be the same as under sect. 138 (see *ante*, p. 189). In a winding up by the Court, or under the supervision of the Court, the application may be made in Chambers.

APPENDIX.



FORMS.

No. 1.

Petition to Wind Up a Registered Company.

In Chancery.

Lord Chancellor.

Vice Chancellor.

In the Matter of the Company's Act, 1862,
and

The Company (Limited).

To the Right Honorable the Lord High Chancellor
of Great Britain.

The Humble Petition of of

Sheweth,

The above named Company was duly registered and incorporated under the Company's Act, 1862, without articles of association, on the day of 186 , by the style or title of "The Company (Limited)," and subsequently on the day of 186 , articles of association of the said Company were registered [*as the case may be*].

The objects of the Company were by the memorandum of association stated to be [*copy from memorandum.*]

The capital of the Company was £ , divided into shares of £ each.

The prospectus of the Company, which was issued by

the directors, stated that of the shares would be the first issue, and that £ was to be paid on allotment.

Numerous applications were made for shares, and about of the shares were allotted to applicants for the same, and the names of the allottees were duly entered in the registry of shareholders of the Company.

The deposit of £1 per share was paid on of the shares so allotted, which is the only money the Company has received from the allottees of such shares.

The Company was extensively advertised in the public papers, and a secretary and clerks were employed, and the whole of the said sum of £ with the exception of £ now at the bankers has been expended in paying for the said advertisements and the salaries of the secretary and clerks.

None of the objects for which the said Company was formed have been prosecuted, nor has the Company in fact transacted any business with that view, but has in fact suspended its business for the space of one whole year from the time of the incorporation, nor is there any prospect or probability of the Company being carried out.

The allottees who agreed to take shares in the Company representing nearly shares in the Company, and who authorised the insertion of their names in the register of shareholders, and to whom shares were allotted, and whose names were duly entered upon the register of shareholders, and who did not pay the deposit of £ per share, refuse to do so, although repeatedly applied to for that purpose by the directors, and the only mode, except under the provisions of the Companies Act, 1862, for recovering the money due from such defaulting shareholders, would be by action at law against each individual, which proceedings would be attended by great delay and expence, and the only effectual mode of obtaining contributions from such defaulting shareholders is under the provisions of the Companies Act, 1862.

Your petitioner is the registered proprietor of shares in the Company, upon which he has paid to the Company the deposit of £ per share.

Your petitioner is desirous that the affairs of the Company should be wound up under the provisions of the Companies Act, 1862. The registered office of the Company is situate at, &c.

Your petitioner therefore humbly prays your Lordship, that the said Company may be wound up by this Court under the provisions of the Companies Act, 1862, and that all necessary and proper provisions may be given for that purpose, or that your Lordship will be pleased to make such further or other order as the nature of the case may require, or to your Lordship may seem meet, and your petitioner will ever pray, &c.

It is intended to serve this petition on, &c.

No. 2.

Petition to Wind up an Unregistered Company.

In Chancery.

In the Matter &c.

The humble petition of C. K. of, &c.

Sheweth,

1. That the Company above mentioned is a Company formed in the town of aforesaid under the style of by the authority and under the provision of [shew the constitution of the Company.]

2. That the said Company carried on the business of under the aforesaid [deed of settlement] until the day of 186 , at &c., but on the day of the same month the said was not opened for the purposes of business, and a written notice was affixed

to the door of the of the said Company in
Street, aforesaid, announcing &c. [*or as the case may be.*]

3. That, under the circumstances aforesaid, the said
Company hath ceased to carry on its business.

4. That the said Company is unable to pay its debts.

5. That your petitioner on the said day of ,
186 , [*the day of the stoppage*], was and hath ever since
continued and still is a creditor of the said Company
for the sum of £ on, &c., and the whole of that sum
is due from the said Company to your petitioner
with a considerable arrear of interest thereon. And your
petitioner hath no security whatever for payment of the
said debt.

6. That the said Company hath not had any place
of business save the said, &c.

Your petitioner, therefore, humbly prays your
Lordship that the said Company may be wound
up by and under the authority of this Honorable
Court. And that for the purpose aforesaid all neces-
sary orders and directions may be made and given
by this Honorable Court. And that your Lordship
will make such further or other order in the premises
as to your Lordship may seem meet.

And your petitioner will ever pray, &c.
This petition is intended to be served on, &c.

No. 3.

Petition to Wind up under Supervision of the Court.

In Chancery.

In the Matter, &c.

The humble petition of, &c.

Sheweth,

That [here state the constitution of the Company.]

That [*if so*] on or about the day of , 186 , .
the said Company was registered under the Companies
Act, 1862, for the purpose of facilitating the winding up
thereof, and its principal registered office is at
aforesaid.

That on or about the day of , 186 , the
following notice was sent to the shareholders or proprie-
tors of the said Company [set out notice of the general
meeting for passing resolution to wind up voluntarily and
appointment of liquidators and their remuneration, in
full.]

That the said notice was duly advertised in manner pre-
scribed and required by the provisions in this behalf of the
 of the said Company and the Companies Act,
1862.

That [if an "extraordinary" resolution has been passed
and it can be done concisely, set out proof of insolvency.]

That a general [*or "extraordinary general," as the case
may be*], meeting of the shareholders of the said Company
was held at, &c., pursuant to the said notice, and the fol-
lowing resolutions were duly passed at the said meeting.

"That it appearing from, &c., and it having been
proved to the satisfaction of the shareholders that the
Company cannot by reason of its liabilities continue
its business, it is advisable to wind up the same; that
accordingly the Company be wound up voluntarily
under the provisions in such behalf of the Companies
Act, 1862.

"That A. B., of, &c., and C. D., of, &c., be and
they are hereby appointed liquidators for the purpose
of winding up the affairs of the Company and distri-
buting its property, and that they be allowed in their
accounts or otherwise paid such salary or remunera-
tion as the Court of Chancery may direct or sanction."

[The above resolutions are merely inserted as

examples. Distinct notice of each resolution must have been given.]

That your petitioner is a proprietor of shares in the Company and is liable to be made a contributory thereof, within the meaning of the said Act.

That while it is advisable to adopt what has been done by the said liquidators appointed under and by virtue of the resolution in that behalf hereinbefore set forth, it is also advisable that the said voluntary winding up should continue subject to the supervision of this Honorable Court upon such terms as the Court shall think fit.

Your petitioner therefore humbly prays your Lordship that the voluntary winding up of the said Company which was resolved upon at the meeting of the Company held, as hereinbefore mentioned, on the day of 186 , may be allowed to continue, but subject to the supervision of this Honorable Court, and that any of the proceedings under the said voluntary winding up may be adopted as your Lordships shall think fit, with liberty for the said liquidators, and for any creditor or contributory of the said Company, to apply to the Judge at chambers to determine any question arising or which may arise in the matter of the said winding up, and to exercise any of the powers which he might exercise if the Company were being wound up compulsorily under the provisions of the above mentioned Act of Parliament, and that for the purposes aforesaid all necessary or proper directions may be given. Or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet. And your petitioner will ever pray, &c.

Note.—It is intended to serve this petition upon

No. 4.

Advertisement of Petition.

(No. 1, Rule 2.)*

In the Matter, &c.

Notice is hereby given, that a petition for the winding up of the above named Company by the Court [*or*, subject to the supervision of the Court] of Chancery, was, on the day of , 186 , presented to the Lord Chancellor [*or*, the Master of the Rolls] by the said Company, [*or*, by A. B., of , a creditor [*or*, contributory] of the said Company, [*or, as the case may be*]. And that the said petition is directed to be heard before the Vice Chancellor [*or*, Master of the Rolls] on the day of , 186 ; and any creditor or contributory of the said Company desirous to oppose the making of an order for the winding up of the said Company under the above Act should appear at the time of hearing, by himself or his counsel, for that purpose : and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D., of &c., [Agents for E. and F., of &c.]

Solicitors for the Petitioner.

No. 5.

Affidavit verifying Petition.

(No. 2, Rule 4.)

In Chancery.

In the Matter, &c.

* These figures refer to the number of the Form in the Order of 11th November, 1862, and the number of the Rule relating to the matter as set out in such Order.

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shewn to me, and marked with the letter A., as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 6.

Affidavit of Service of Petition.

In Chancery.

In the Matter, &c.

I &c., make oath and say as follows.

1. I did on the day of 186 , serve the Company with a petition in the above matters preferred unto the Right Honourable the [Lord High Chancellor or Master of the Rolls, as the case may be] by of with his Lordship's order thereon, dated the day of 186 , whereby it was ordered that [set out order] by delivering to and leaving with a [clerk] of the said Company, at the registered office [or place of business, *as the case may be*] of the said Company, situate at in the county of a true copy of the said petition and order, and at the same time producing and shewing to the said the said original petition with his Lordship's order thereon as aforesaid.

[If the order is generally for the next petition day and a special day is fixed by the Vice Chancellor, notice thereof should be indorsed on the copy petition in form contained in the next paragraph.]

2. And I say that on the said copy petition so served as aforesaid there was indorsed a notice in the following words and figures, that is to say :

“To the Company. Take notice that his Honor the Vice Chancellor has this day ordered that this petition be heard before him on the day of 186 , at of the clock in the noon at No. , in the county of . Dated this day of 186 . Yours, &c.”

No. 7.

Affidavit of due Insertion of Advertisement of Petition.

In Chancery.

In the Matter &c.

I of make oath and say:

1. The advertisement required by Rule 2 of the General Orders and Rules of this Honorable Court to regulate the mode of proceeding under the Companies Act, 1862, of the petition of A. B., of presented to this Honorable Court in the above matters, on the day of 186 , was duly inserted and appeared in the *London Gazette*, of the day of 186 , and in and being [two London daily morning newspapers or two local newspapers circulating in the district where the registered office, or principal or last known place of business of such Company is or was situate, *as the case may be*], on the day of 186 , respectively.

2. The newspapers now produced and shewn to me, marked A. and B., are the newspapers containing the said advertisement.

No. 8.

Order for Winding up by the Court. (No. 3, 25 & 26
Vict. c. 89, ss. 81, 82.)

The Master of the Rolls } day, the day of
[or, Vice Chancellor } 186 .
]. In the matter &c.

Upon the petition of the above-named Company [or, A. B., of, &c., a creditor, or, contributory of the above-named Company] on the day of 186 , preferred unto the Right Honorable the Lord High Chancellor of Great Britain [or, Master of the Rolls], and upon hearing counsel for the petitioner, and for , and upon reading the said petition, an affidavit of [the said petitioner] filed, &c., verifying the said petition, an affidavit of L. M., filed the day of 186 , the *London Gazette* of the day of , the *Times* newspaper of the day of [enter any other papers], each containing an advertisement of the said petition [enter any other evidence], ["and the petitioner by his counsel consenting to be treated as a contributory of the said Company in respect of shares;" see *Littlehampton Steam Ship Company Limited*, 13 W. R. 379], His Honor [or, this Court] doth order, that the said Company be wound up by this Court under the provisions of the Companies Act, 1862.

No. 9.

Order for Winding up, subject to Supervision. (No. 4,
25 & 26 Vict. c. 89, ss. 147, 148.)

The Master of the Rolls } day the day of
[or, Vice Chancellor } 186 .
]. In the matter &c.

Upon the petition &c., His Honor [or this Court]

doth order, that the voluntary winding up of the said Company be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding up may be adopted as the Judge shall think fit. And the creditors, contributories, and liquidators of the said Company, and all other persons interested, are to be at liberty to apply to the Judge at Chambers as there may be occasion.

No. 10.

Advertisement of Order to Wind up. (No. 5, Rule 6.)

In the Matter, &c.

By an order made by the Master of the Rolls [*or*, the Vice Chancellor] in the above matter, dated the day of , 186 , on the petition of the above-named Company [*or*, A. B., of], it was ordered that, &c. [*as in order*].

C. & D., of, &c.
Solicitors for the said Petitioner.

No. 11.

Summons for the Appointment of a Provisional Official Liquidator.

In Chancery.

In the Matter, &c.

Let all parties attend at my Chambers, No. , Middlesex, on the day of , 186 , at of the clock in the noon, on the hearing of

an application on the part of A. B., of _____, a
 of the above-named _____ Company, that W. T., of, &c.,
 accountant, may be provisionally appointed official liqui-
 dator for the purpose of conducting the proceedings in
 the winding up of the said _____ Company, until such
 time and with such directions as this Court shall think
 fit.

Dated the _____ day of _____, 186 _____, Vice
 Chancellor [*or, Master of the Rolls*].

This summons was taken out by _____
 To _____

No. 12.

Order appointing a Provisional Official Liquidator.

(No. 9, Rules 10, 11, 15, 59.)

Master of the Rolls, [*or,* _____, the _____ day of
 Vice Chancellor _____], _____, 186 _____.
 at Chambers. } In the matter, &c.

Upon the application, &c., and upon reading, &c., the
 Judge doth hereby appoint R. P. H., of, &c., provisional
 official liquidator of the above named Company [*If
 security dispensed with add, without security; or, if
 security is to be given, add directions as to security,
 accounts, and payment into the bank, as in Form No. 8.*]
 And the said Judge doth hereby limit and restrict the
 powers of the said R. P. H., as such provisional official
 liquidator, to the following acts, that is to say, [*Describe
 the acts which the provisional official liquidator is to be
 authorised to do.*]

No. 13.

Summons to proceed on Order to Wind up.

In Chancery.

. In the Matter, &c.

[*Commence as in Form No. 11*], on the hearing of an application on the part of [A. B., the person having the conduct of the order], to proceed on the order to wind up the above-mentioned Company, dated the day of , 186 . .

Dated this day of 186 ; [*conclude as in Form No. 11.*]

 No. 14.

Advertisement of Time and Place fixed for the Appointment of Official Liquidator.

(No. 6, Rule 9.)

In the Matter, &c.

Notice is hereby given, that the Master of the Rolls [*or*, the Vice-Chancellor] has fixed the day of 186 , at o'clock in the noon, at his chambers in the Rolls Yard, Chancery Lane [*or*, at No. Lincoln's Inn], in the county of Middlesex, as the time and place for the appointment of an official liquidator of the above named Company.

G. H.,
Chief Clerk.

No. 15.

Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 14 has been issued.

(No. 7.)

In the Matter, &c.

We, the undersigned contributories of the above named Company for the number of shares placed opposite our respective names, hereby propose Mr. W. T., of &c., public accountant, to be the official liquidator of the said Company [and H. N., of &c., and J. P., of &c., to be his sureties].

Name.	Address.	Number of Shares held.

No. 16.

Affidavit of Fitness of proposed Liquidator.

In Chancery.

In the Matter, &c.

I make oath and say as follows :—

1. I know and am well acquainted with W. T. of in the of and have been acquainted with him for years and upwards. The said W. T. is [set out circumstances showing capability for the office], and is a man of thorough business habits and capabilities;

and I say that he is a fit and proper person to be appointed official liquidator of the above mentioned Company Limited, to conduct the proceedings in the winding up of the same (either provisionally or permanently).

No. 17.

Order appointing an Official Liquidator.

(No. 8, Rules 10, 11.)

Master of the Rolls [*or*,
Vice Chancellor] } , the day of ,
186 .
at Chambers. In the Matter, &c.

Upon the application, &c., and upon reading, &c., the Judge doth hereby appoint R. P. H., of &c., official liquidator of the above-named Company. [*If security has not been given add*, and it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the Judge.] And it is ordered that the said R. P. H. do, on the day of , and day of 186 , and the same days in each succeeding year, leave his accounts at the chambers of the said Judge. And it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of England, to the credit of the account of the official liquidator of the said Company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed add*, And the said Judge doth declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [*or*, any one, *or*, two] of the official liquidators hereby appointed, that is to say, [*describe the acts*]; and that all other acts so required or authorised to be done

be done by both [*or*, all] the official liquidators hereby appointed.]

No. 18.

Recognizance of the Official Liquidator and Sureties.

(No. 10, Rule 10.)

186 .
In the Matter, &c.
The Master of the Rolls [*or*, Vice Chancellor
recognizance.
G. H.,
] has approved of and allowed this
Chief Clerk.
R. P. H., of &c., W. B., of &c., and T. P., of
&c., before our Sovereign lady the Queen in her
High Court of Chancery personally appearing, do
acknowledge themselves, and every of them doth
acknowledge himself, to owe to the Right Hon-
orable Sir John Romilly, Knight, the Master of
the Rolls, and the Honorable Sir Richard Torin
Kindersley, Knight, the senior Vice Chancellor
of the said Court, the respective sums of lawful
money of Great Britain set opposite to their
respective names in the Schedule hereto, to be
paid to the said Sir John Romilly and Sir Richard
Torin Kindersley, or one of them, or the executors
or administrators of them, or one of them; and
in default of payment of the said sums, the said
R. P. H., W. B., and T. P., are willing and do
agree, and every of them is willing and doth
agree for himself, his heirs, executors, and admin-
istrators, by these presents, that the said sums
shall be levied, recovered, and received of and
from them and every of them, and of and from
all and singular the manors, messuages, lands,
tenements, and hereditaments, goods, and chattels,
of them and every of them, wheresoever the same
shall be found. Witness our Sovereign Lady
Victoria, by the Grace of God, of the United
Kingdom of Great Britain and Ireland, Queen,
Defender of the Faith, and so forth, at West-
minster, the day of , 186 .

Whereas, in the matter of &c. [*take title from order to wind up*] the Master of the Rolls [*or, Vice Chancellor*] has, by an order dated the _____ day of _____, 186____, appointed the said R. P. H. official liquidator of the said Company, and has thereby directed him to give security, to be approved of by the said Judge [*or, in case the security precedes the order appointing*, has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said Company, upon his giving security]. And whereas the said Judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the Schedule hereto, and has also approved of the above written recognizance, with the underwritten condition, as a proper security to be entered into by the said R. P. H., W. B., and T. P., pursuant to the said order and [*or, pursuant to*] the general order of the said Court in that behalf; and in testimony of such approbation the chief clerk of the said Judge hath signed an allowance in the margin hereof. Now the condition of the above written recognizance is such, that if the said R. P. H., his executors, or administrators, or any of them, do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as official liquidator of the said Company at such periods and in such manner as the said Judge shall appoint, and pay the same as the said Judge hath [*by the said order*] directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO.

R. P. H.	.	_____	.	Thousand pounds.
W. B.	.	_____	.	Thousand pounds.
T. P.	.	_____	.	Thousand pounds.

Taken and acknowledged by the above named
R. P. H., &c. &c.

No. 19.

Affidavit of Sureties.

(No. 11, Rule 10.)

In Chancery.

In the Matter, &c.

We, W. B., of &c., and T. P., of &c., severally make oath and say as follows.

1. I, the said W. B., for myself, say that I am worth the sum of £ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P., for myself, say that I am worth the sum of £ , of &c. [*as above*].

Sworn, &c.

No. 20.

Certificate of Official Liquidator having given Security.

(Title.)

In pursuance of directions given me by (M. R. or V. C.)

I hereby certify that pursuant to an order dated the day of 18 , W. T., of &c., the person appointed by the said order to be the official liquidator of the said Company has given security pursuant to the said order, and the general rules and orders of this Court, and has entered into a recognizance together with C. D., of &c., and E. F., of &c., dated the day of 18 , which has been approved by the said Judge, in testimony whereof I have signed an allowance in the margin thereof, and such recognizance has been duly enrolled.

The evidence produced, &c.

Dated, &c.

No. 21.

*Sanction of Appointment of Solicitor to Official Liquidator,
and Appointment.*

(No. 12, 25 & 26 Vict. c. 89, s. 97.)

In the Matter, &c.

The Master of the Rolls [*or*, Vice Chancellor]
sanctions the official liquidator appointing a solicitor to
assist him in the performance of his duties.

G. H.,
Chief Clerk.

I hereby appoint Messrs. C. and D., of &c., to be my
solicitors in this matter.

Dated this day of , 186 .
R. P. H., Official Liquidator.

No. 22.

Advertisement of Appointment of Official Liquidator.

(No. 15, Rule 14.)

In the Matter, &c.

The Master of the Rolls [*or*, the Vice Chancellor
] has, by an order dated the day of ,
186 , appointed R. P. H., of , to be official liqui-
dator of the above named Company.

Dated this day of 186 .
G. H.,
Chief Clerk.

No. 23.

Summons for Leave to Attend the Proceedings.

[*Commence as in Form No. 11*] on the application of A. B., of &c. [a contributory or creditor as the case may be], that he may be at liberty to attend the proceedings under the order to wind up the above mentioned Company, dated the day of 186 , and that the costs of this application and of attending the said proceedings may be borne as this Court may direct.

Dated, &c. [*as in Form No. 11*].

No. 24.

Order to Appoint Creditors' Representative.

The Master of the Rolls [*or, Vice Chancellor*]
day of 186 .

In the Matter, &c.

Upon the application of A. B., of &c., and upon hearing &c., and reading, &c., His Honor [or this Court] doth hereby appoint C. D., of &c., to represent all the creditors [or contributories] of the said Company in and about the proceedings to wind up the said Company by the said Court.

No. 25.

Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator.

(No. 52, Rule 50.)

The Master of the Rolls [or,
 Vice Chancellor] at } day of 186 .
 Chambers. In the Matter, &c.

The Master of the Rolls [or, Vice Chancellor] doth hereby sanction [or, has sanctioned] the following proceedings being taken [or, acts being done] by the official liquidator of the above named Company, namely, [state the proceedings to be taken or acts to be done, as] the bringing [or, instituting] and prosecuting an action at law [or, suit in equity], in the name and on behalf of the said Company, against [or, defending an action at law [or, suit in equity] brought [or, instituted] against the said Company by K. M., of &c., to recover a debt or sum of £ alleged to be due from [or, to] the said K. M. to [or, from] the said Company, &c.

G. H.,
 Chief Clerk.

No. 26.

Vesting Order in the Official Liquidator of an Unregistered Company.

In Chancery.

The day of 186 .
 In the Matter, &c.

Upon the application of W. T., the official liquidator of the above mentioned Company, and upon hearing the

solicitors for the said applicant, and reading two orders in this matter dated respectively the day of 186 : and the day of 186 : It is ordered that all property both real and personal, including all interests, claims, and rights into and out of property real and personal and including all things in action belonging to or vested in the Company, or to or in any person or persons in trust for or on behalf of the said Company do vest in the official liquidator of the said Company.

No. 27.

Order for Affidavit of Documents and Delivery to Official Liquidator.

(See Form No. 28.)

In Chancery.

In the Matter, &c.

Upon the application of W. T., the official liquidator of the above named Company, and upon hearing the solicitors for the applicant, and for : It is ordered that the said do within seven days after the service of this order upon him, make and file a full and sufficient affidavit, stating whether he has or has had in his possession, custody or power, any, and if any what, books, papers, or documents in his possession, custody or power, relating to the matters in question in this matter, and accounting for the same. And it is ordered that the said do within seven days after filing the said affidavit produce and leave with the said W. T., the said official liquidator of the said Company, at his office, situate at , such, if any, of the said books, papers, or documents, as he may by his said affidavit admit to be in his possession, custody, or power.

No. 28.

***Order for Payment of Money or Delivery of Books, &c., to
Official Liquidator.***

(No. 13, 25 & 26 Vict. c. 89, ss. 100, 101.)

The Master of the Rolls [*or*, } day, the day of
Vice Chancellor] at } , 186 .
Chambers. } In the Matter, &c.

Upon the application of &c., and on reading, &c., It is ordered, that A. B., of &c., do, within four days after service hereof, pay to [or, deliver, convey, surrender, or transfer to or into the hands of] R. P. H., the official liquidator of the said Company, at the office of the said R. P. H., situate at &c., the sum of £ being the amount of debt appearing to be due from the said A. B. on his account with the said Company [or, any sum or balance, books, papers, estate, or effects], [*or, specifically describe the property*] now being in the hands of the said A. B., and to which the said Company is *prima facie* entitled [*or, otherwise, as the case may be*]. [*If for a balance say* such sum being the balance now appearing due from the said A. B. on his account with the said Company after debiting him with the call of per share, made by the said order in this matter.] Dated the day of 186 .

No. 29.

Direction to open Account at the Bank of England.

(No. 14, Rules 11, 32, 36–44.)

The Master of the Rolls }
[*or*, Vice Chancellor } day of _____, 186____.
], at Chambers. } In the Matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

An order, dated the day of , 186 , having been made in the above matter by the Master of the Rolls [*or*, the Vice Chancellor] for winding up the above named Company by the Court of Chancery, under the provisions of the said Act, and R. P. H., of , having by order dated the day of 186 , been appointed the official liquidator of the said Company, you are requested to open an account, to be entitled "The Account of the Official Liquidator of the Company," in your books, pursuant to the said Act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by one of the chief clerks of the said Judge, whose signatures are also attached hereto.

I am, Gentlemen,

Your most obedt. Servt.,

G. H.,

Chief Clerk.

Signatures.

R. P. H., Official Liquidator.

G. W. { Chief Clerks of the Master of
G. H. { the Rolls [*or*, Vice Chancellor
].

— — —

No. 30.

Appearance Book.

(No. 53, Rule 62.)

In the Matter, &c.

Appearance Book.

Date when Ap- pearance entered.	Party's Name.	Whether Creditor or Con- tributory.	If he appears in person, his Address for service.	If he appears by a Solici- tor, his Soli- citor's Name.	Solicitor's Address.	Amount of Debt [or No. of Shares.]

No. 31.

Advertisement for Creditors.

(No. 16, Rule 20.)

In the Matter, &c.

The creditors of the above named Company are re-
quired, on or before the day of , 186 , to
send their names and addresses, and the particulars of
their debts or claims, and the names and addresses of
their solicitors, if any, to R. P. H., of , the official
liquidator of the said Company, and, if so required by
notice in writing from the said official liquidator, are by
their solicitors to come in and prove their said debts or
claims, at the chambers of the Master of the Rolls [*or*,
the Vice Chancellor], in the Rolls Yard, Chancery
Lane [*or*, at No. , Lincoln's Inn], in the county of
Middlesex, at such time as shall be specified in such
notice, or in default thereof they will be excluded from
the benefit of any distribution made before such debts are
proved.

day, the day of , 186 , at
o'clock in the noon, at the said chambers, is ap-
pointed for hearing and adjudicating upon the debts and
claims.

Dated this day of , 186 .
G. H.,
Chief Clerk.

No. 32.

Affidavit of Official Liquidator as to Debts and Claims.

(No. 17, Rule 22.)

In Chancery.

In the Matter, &c.

I, R. P. H., of, &c., the official liquidator of the above
named Company, make oath and say as follows.

1. I have, in the paper writing now produced and
shewn to me, and marked with the letter A, set forth a
list of all the debts and claims, the particulars of which
have been sent in to me by persons making claims upon,
or claiming to be creditors of the said Company, pursuant
to the advertisement issued in that behalf, dated the
day of , 186 ; and the names and ad-
dresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims, and
examined the same with the books and documents of the
said Company, in order to ascertain, so far as I am able,
which of such debts and claims are justly due from the
said Company; and I have, in the first part of the said
list, set forth such of the said debts and claims, or parts
thereof, as, in my opinion, are justly due from the said
Company, and proper to be allowed without further evi-
dence; and I have, in the sixth column of the said first part
of the said list, set forth the amounts proper to be allowed

in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

No. 33.

Exhibit referred to in Affidavit No. 17.

(No. 18.)

A.

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked A., was produced and shewn to R. P. H., and is the same as is referred to in his affidavit, sworn before me this day of , 186 .

W. B., &c.

First Part.—Debts and claims proper to be allowed without further evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				£ s. d.	£ s. d.	

Second Part.—Debts and claims which ought to be proved by the Creditors.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.
				£ s. d.

No. 34.

Notice to Creditors to come in and prove their Debts.

(No. 20, Rule 24.)

In the Matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above named Company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of the Master of the Rolls, in Rolls Yard, Chancery Lane [*or*, of the Vice Chancellor , at No. , Lincoln's Inn], in the county of Middlesex, on the day of 186 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 186 .
R. P. H., Official Liquidator.

To Mr. S. T.

No. 35.

Affidavit of Creditor, in proof of Debt.

(No. 21, Rule 24.)

In Chancery.

In the Matter, &c.

I, S. T., of &c., make oath, and say as follows:—

1. The above-named Company was, on the day of , 186 , the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of £ for, &c. [*Describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.*]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof, [*if any security add,*] except the said, [*describe the security*] herein before mentioned or referred to.

Sworn, &c.

— — —

No. 36.

Notice to Creditor of Allowance of Debt.

(No. 19, Rule 23.)

In the Matter, &c.

[Place and Date.]

Sir.

The debt claimed by you in this matter has been

allowed by the Judge at the sum of £ . [*If part only allowed add, If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., as in Form 34.*]

I am, &c.,

R. P. H., Official Liquidator.

To Mr. P. R.

No. 37.

Certificate of Chief Clerk, as to Debts and Claims.

(No. 22, Rule 28.)

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or, Vice Chancellor*], I hereby certify that the result of the adjudication upon debts and claims against the above named Company, brought in pursuant to the advertisement issued in that behalf, dated the day of 186 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows:—

The debts and claims which have been allowed are set forth in the first Schedule hereto, and, with the interest thereon and costs mentioned in the said Schedule, are due to the persons therein named, and amount altogether to £

I have in the first part of the said Schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

I have in the second part of the said Schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of £4 per cent. per annum, from the day of 186 , being the date of the said order to wind up the Company, down to the date of this certificate.

The claims set forth in the second Schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced; &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Debts and Claims which carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1.	J. L.	29, Street, London, Stationer. Principal - - - - - Interest at £ per cent. per annum, (less Property Tax) from 186 to the date of this Certificate - - Costs of Proof - - -	On Bill of Ex- change, dated, &c. £ £ £ Total first Part. £	£ s. d.

Second Part.—Debts and Claims which do not carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
				£ s. d.	£ s. d.
40	J. W.	15, Street, London.			
		Coal Merchant.	Goods sold	2 0 0	54 0 0
		Principal - - -	£50 0 0		
		Costs of Proof -	2 0 0		
			Totals £		
			Add Total first Part. £		
			Total first and second Parts. £		

THE SECOND SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				£ s. d.

No. 38.

(No. 23, Rule 28.)

Sir,

Principal	.	.	.	.	£
Interest	.	.	.	.	£
Costs of proof	.	.	.	.	£

Total £

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 186 .

I am, &c.,

R. P. II., Official Liquidator.

To Mr. S. T.

[*Form of Order.*]

Sir,

Please to deliver to W. R. the cheque for £
referred to in the above letter as payable to me.

S. T., Creditor.

To Mr. R. P. H.,
Official Liquidator of the
Company. }

No. 39.

Affidavit in support of List of Contributories.

(No. 24, Rule 29.)

In Chancery.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above
named Company, make oath and say as follows:—

1. The paper writing now produced and shewn to me,
and marked with the letter A, contains a list of the con-
tributories of the said Company, made out by me from
the books and papers of the said Company, together with
their respective addresses, and the number of shares [*or*,
extent of interest] to be attributed to each; and such list
is, to the best of my knowledge, information and belief,
a true and accurate list of the contributories of the said
Company, so far as I have been able to make out and
ascertain the same.

2. I have, in the first part of the said list marked A,
distinguished the persons who are contributories in their
own right.

3. I have, in the second part of the said list marked A,
distinguished the persons who are contributories as
being representatives of, or being liable to the debts of
others.

Sworn, &c.

No. 40.

List of Contributories referred to in Form No. 39.

(No. 25.)

A.

In the Matter, &c.

This list of contributories marked A, was produced and shewn to R. P. H., and is the same list of contributories as is referred to in his affidavit, sworn before me this day of 186 . W. B., &c.

First Part.—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of shares [or extent of interest.]

Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of interest.]

No. 41.

Notice to Contributories of Appointment to settle List of Contributories.

(No. 26, Rule 30.)

In the Matter, &c.

The Master of the Rolls [*or*, Vice Chancellor]
has appointed the day of 186 , at of
the clock in the noon at his chambers in the Rolls
Yard, Chancery Lane [*or*, at No. Lincoln's Inn],
in the county of Middlesex, to settle the list of the con-
tributories of the above named Company, made out and
left at the chambers of the said Judge by the official
liquidator of the said Company, and you are included in
such list in the character, and for the number of shares
[*or*, extent of interest] stated below ; and if no sufficient
cause is shewn by you to the contrary at the time and
place aforesaid, the list will be settled by the said Judge,
including you therein.

Dated this day of 186 .
R. H. P., Official Liquidator.

To Mr. A. B. [and to }
Mr. C. D., his Solicitor.] }

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [<i>or</i> extent of interest.]

No. 42.

Affidavit of Service of Notice.

(No. 27, Rule 30.)

In Chancery.

In the Matter, &c.

I, W. S., of &c., clerk to Messrs. C. and D., of &c., the solicitors of the official liquidator of the above named Company, make oath and say as follows:—

1. The first six columns of the Schedule now produced and shewn to me, and marked with the letter A, contain a true copy of the list of contributories of the said Company, made out and left at the chambers of the Master of the Rolls [*or*, Vice Chancellor], by the said official liquidator, on the day of 186 , and now on the file of proceedings of the said Company, as I know from having, on the day of 186 , examined and compared the said Schedule with the said list; and I have, in the seventh column of the said Schedule marked A, set forth the names and addresses of the Solicitors who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 186 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shewn to me, marked B, upon each of the respective persons, whose names, addresses and descriptions appear in the second, third and fourth columns of the said Schedule marked A, except that in

the tabular form at the foot of such copies respectively. I inserted the number on list, name, address, description, in what character included, and number of Shares [or, extent of interest] of the person on whom such copy of the said notice was served in the same words and figures as the same particulars are set forth in the said Schedule marked A.

3. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, or their Solicitors, according to their respective names and addresses appearing in the said Schedule marked A, and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving house, No. _____ Street, in the County of _____, between the hours of _____ and _____ of the clock in the _____ noon of the said _____ day of _____ 186 .

Sworn, &c.

No. 43.

The Schedule referred to in Form No. 42.

(No. 28.)

A.

In the Matter, &c.

This Schedule marked A was produced and shewn to W. S., and is the same Schedule as is referred to in his affidavit, sworn before me, this _____ day of _____ 186 .
W. B., &c.

1. Number on List.*	2. Name.	3. Address.	4. Description.	5. In what Charac- ter included.	6. Number of Shares [or, extent of Interest.]	7. Names and Addresses of Solicitors who have en- tered appearances, and been served with a copy of the notice referred to in the Affidavit of W. S., to which this Schedule is an exhibit.

No. 44.

Supplemental List of Contributories, and Affidavit in Support.

(No. 29, Rule 29.)

In Chancery.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above named Company, make oath and say as follows:—

1. Since leaving at the chambers of the Judge the list of the contributories in this matter, on the day of 186 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shewn to me, and marked with the letter B, are, or have been holders of shares in [or, members of] the said Company, and to the best of my judgment, information, and belief, such persons are contributories of the said Company.

2. The said supplemental list marked B, contains the

names of such persons, together with their respective addresses, and the number of shares [*or*, extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information, and belief, true and accurate.

3. I have, in the first part of the said list marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked B, distinguished such of the said persons as are contributories as being representatives of or being liable to the debts of others. Sworn, &c.

No. 45.

Supplemental List of Contributories referred to in Form No. 44.

(No. 30.)

B.

In the Matter, &c.

This supplemental list of contributories marked B was produced and shewn to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of 186 .
W. B., &c.

Note.—*The Supplemental List is to be made out in the same form as the Original List, Form No. 40.*

No. 46.

Summons to exclude name from List of Contributories before Certificate is settled.

[Commence as in Form No. 11] on the hearing of an

application on the part of A. B., of &c., that the name of the said A. B. may be excluded from class of the list of contributories of the said Company as a contributory in respect of shares, and that the costs of this application may be paid by the official liquidator of the said Company. Dated &c. as in Form No. 11.

No. 47.

Summons by Contributory to vary List by adding other Parties.

[Commence as in Form No. 11] on the application of L. M. of &c., a contributory of the said Company, that the list of contributories of the said Company may be varied by placing A. B., of &c., upon such list as a member in class (A.) in respect of shares in the place and stead of A. S., whose name now appears upon the said list as a contributory in respect of such shares.

[Conclude as in Form 11.]

No. 48.

Certificate of Chief Clerk of Settlement of the List of Contributories.

(No. 31, Rule 31.)

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named Company, made out and left at the chambers of the said Judge by the official liquidator of the said Company on the day of 186 , pursuant to the above statute and the general order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first schedule hereto, have been included in the said list of contributories as contributories of the said Company in respect of the number of shares [or, extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list, as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth opposite the name of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Descrip- tion.	In what Character included.	Number of Shares [or, extent of Interest].	Date when included in the List.

No. 49.

Summons to take the Opinion of the Judge on Chief Clerk's Certificate.

[Commence as in Form No. 11] on the hearing of an application on the part of A. B. of &c., to take my opinion upon the result of the proceedings under the order to wind up the above named Company, dated the day of 186 , so far as relates to the [list of contributories of the said Company], as certified by the certificate of my chief clerk, dated the day of 186 , and that the said certificate may be reviewed in the following respect, namely, [by striking out the name of the said A. B. in the part of the schedule to the said certificate as a contributory in respect of shares]. And that such consequential alterations or corrections as may be necessary may be made in the said certificate, and that the costs of this application may be paid by the official liquidator of the said Company out of the assets thereof.

[Conclude as in Form No. 11.]

No. 50.

Summons to vary Certificate.

[Commence as in Form No. 11] on the hearing of an application on the part of A. B. of &c., that the certificate of my chief clerk, dated the day of 186 , and filed the day of 186 , so far as it includes the name of the applicant in the part of the schedule to the said certificate as a contributory for shares may be varied by excluding the name of the applicant from the

Dated, &c. (See Form No. 11).

Order on Application to vary List.

Master of the Rolls [*or,* }
Vice Chancellor }
] }
 at chambers. }

day the day of
 186 .
 In the Matter, &c.

No. 52.

[Commence as in Form No. 11] on the application of

A. B., of &c., that the register of members of the said Company may be rectified by striking out [*or, entering therein, as the case may be*] the name of the said A. B. as the holder of shares numbered to inclusive, as having been without sufficient cause [*entered in or omitted from the said register*], and that the costs of this application may be paid by [*as the case may be*].

Dated, &c., as in Form No. 11.

— — —
No. 53.

Order to rectify Register.

Vice Chancellor

the day of 186 .

In the Matter of the Company (Limited), and
in the matter of The Companies Act, 1862, and in
the matter of A. B., a contributory.

Upon motion this day made unto this Court by counsel for A. B., and upon hearing counsel for the official liquidators of the said Company, and upon reading :
And this Court being of opinion that the said A. B. cannot be held as a shareholder of the above named Company in respect of the shares numbered to inclusive, doth order that the register of members of the said Company be rectified by striking out the name of the said A. B. therefrom as the holder of the said shares. And it is ordered that notice of such rectification be given to the Registrar of Joint Stock Companies by the said official liquidators, and it is ordered that the costs [of the said official liquidators of the said Company, and of the said A. B., as the case may be] be taxed by the Taxing Master and paid out of the assets of the said Company.

Note.—If the order is made on an application to review

the list of contributories it may be incorporated with Form No. 51. If the application is by the official liquidator to amend the register by including the name of a shareholder, the form of the order can easily be adapted to the circumstances.

No. 54.

Summons for Intended Call.

(No. 34, Rule 33.)

In the Matter, &c.

Let all parties concerned attend at my chambers in the Rolls Yard, Chancery Lane [or, at No. , Lincoln's Inn], in the county of Middlesex, on day, the day of 186 , at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the above named Company, that a call to the amount of £ per share may be made on all the contributories [or, if upon any particular class, specify the same] of the said Company.

John Romilly, Master of the Rolls.

or

X. Y., Vice Chancellor.

This summons was taken out by A. and B., of in the county of , solicitors for the said official liquidator.

To Mr. A. B., of &c., a contributory of the said Company proposed to be included in the said call. }

No. 55.

Advertisement of Intended Call.

(No. 35, Rule 33.)

In the Matter, &c.

By direction of the Master of the Rolls [*or, Vice Chancellor*] notice is hereby given that the said Judge has appointed the day of , 186 , at o'clock in the noon, at his chambers in the Rolls Yard, &c., to make a call on all the contributories of the said Company [*or, as the case may be*], and that the official liquidator of the said Company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 186 .

G. H.,
Chief Clerk.

No. 56.

Affidavit of Official Liquidator in support of Proposal for Call

(No. 33, Rule 33.)

In Chancery.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above named Company, make oath, and say as follows:—

1. I have, in the Schedule now produced and shewn to me, and marked with the letter A, set forth a statement, shewing the amount due in respect of the debts allowed

against the said Company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of £ , or thereabouts.

2. I have also in the said Schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sum of £ and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the contributories of the said Company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. It appears by the chief clerk's certificate, dated the day of 186 , that persons have been settled on the list of contributories of the said Company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said Company, and of paying the costs, charges, and expenses of and incidental to the winding up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said Company mentioned in the said Schedule A, and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realising the amount required as before mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 57.

General Order for a Call.

(No. 36, Rule 34.)

Master of the Rolls [*or*, the day of
 Vice Chancellor] 186 .
 at Chambers. } In the matter, &c.

Upon the application of the official liquidator of the above named Company, and upon reading two orders, dated the day of 186 , and the day of 186 , the chief clerk's certificate, dated the day of 186 , an affidavit of the said official liquidator, filed 186 , and the exhibit marked A therein referred to, and an affidavit of filed 186 , it is ordered, that a call of pounds per share be made on all the contributories of the said Company [*or, as the case may be*]. And it is ordered, that each such contributory do on or before the day of 186 , pay into the Bank of England, to the account of the official liquidator of the Company, the amount which will be due from him or her in respect of such call.

No. 58.

Notice to be served with the General Order for a Call.

(No. 37, Rule 34.)

In the Matter, &c.

The amount due from you, A. B., in respect of the call made by the above [*or, within*] order, is the sum of £ , which sum is to be paid by you into the Bank of England, to the account mentioned in the said order.

You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the Bank upon such payment, and the cashier of the Bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof to be given to me as the official liquidator of the said Company, at my office, No. , Street, in the county of Middlesex.

Dated this day of 186 .

R. P. H., Official Liquidator.

To Mr. A. B.

— — —
No. 59.

Summons for Payment of Call due from Contributory.

[Commence as in Form No. 11] on the application of W. T., the official liquidator of the above named Company, that C. D. of &c., one of the contributories of the said Company, may be ordered, on or before the day of 186 , or within four days after service of this order, to pay into the Bank of England to the account of the official liquidator of the Company (or to W. T., the official liquidator of the said Company at his office, No. in the county of), the sum of £ , in respect of the call of £ per share, made by the order for call dated the day of 186 . [See Form of Order No. 61, and adapt this summons to circumstances of the case.] Dated &c., as in Form No. 11.

[N.B.—This summons is not absolutely necessary, see Rule 35].

No. 60.

Affidavit in support of Application for Order for Payment of Call due from Contributories.

(No. 38, Rule 35.)

In Chancery.

In the Matter, &c.

I, R. P. H., of, &c., the official liquidator of the above named Company, make oath and say as follows:—

1. None of the contributories of the said Company whose names are set forth in the schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, in pursuance of the order of the Judge in that behalf, dated the day of 186 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule, are the true amounts due and owing by such contributories respectively in respect of the said call. Sworn, &c.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Note.—In addition to the above Affidavit, an Affidavit of the service of the Order and Notice (Nos. 57 and 58) will be required.

No. 61.

Order for Payment of Call due from a Contributory.

(No. 39, Rule 35.)

The Master of the Rolls [or, Vice Chancellor] at } day, the day
chambers } of 186 .
In the Matter, &c.

Upon the application of the official liquidator of the above named Company, and upon reading the order, dated the day of 186 , an affidavit of filed the day of 186 , and an affidavit of the said official liquidator, filed the day of 186 , it is ordered, that C. D., of &c., [or, E. F., of &c., the legal personal representative of L. M., late of &c., deceased], one of the contributories of the said Company [or if against several contributories, the several persons named in the second column of the schedule to this order being respectively contributories of the said Company] do, on or before the day of 186 , or within four days after service of this order, pay into the Bank of England to the account of the official liquidator of the Company, [or, to A. B., the official liquidator of the said Company, at his office, No. Street, in the county of Middlesex], the sum of £ [if against a legal personal representative add], out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid to be administered in a due course of administration, if the said E. F. has in his hands so much to be administered; or, if against several contributories, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto], such sum [or, sums] being the amount [or, amounts] due from the said C. D. [or, L. M.] [or, the said several persons

respectively] in respect of the call of £ per share
made by the said order dated the day of
186 .

THE SCHEDULE REFERRED TO IN THE FORE-
GOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Note.—*The copy for service of the above Order must be
endorsed, as required by the 23rd Consol. Order, Rule 10.*

—

No. 62.

*Notice to be endorsed on, or served with every Order
directing Payment of Money into the Bank of England.*

(No. 40, Rule 39).

You can make the payment directed by the within [*or,*
above] order at the Bank of England in person, &c. [*as in*
the Form No. 58.]

R. P. H., official liquidator.

To Mr.

No. 63.

Certificate of Payment of Money into the Bank of England.

(No. 41, Rule 39.)

In the Matter, &c.

No.

day of , 186 .

I hereby certify that C. D., of &c., has this day paid into the Bank of England the sum of , to be placed to the credit of the official liquidator of the Com-
pany, pursuant to an order dated the day of
186 .

For the Governor and Company of the Bank of England,
H. M.,
Cashier.

No. 64.

Affidavit of Service of Order for payment of Call.

(No. 42, Rule 35.)

In Chancery.

In the Matter, &c.

I, J. B., of &c., make oath, and say as follows:—

1. I did, on the day of , 186 , personally serve G. F., of , in the county of , &c., with an order made in this matter by his Honor the Master of the Rolls [or, Vice Chancellor], dated the day of , 186 , whereby it was ordered [*set out the Order in the past tense*] by delivering to and leaving with the said G. F. at , in the county of , a true

copy of the said order, and at the same time producing and shewing unto him, the said G. F., the said original order duly entered.

2. There was endorsed on the said copy, when so served, the following words, that is to say, "If you, the within-named G. F., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant-at-arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order."

Sworn, &c.

— — —

No. 65.

Form of Order for Substituted Service.

In Chancery.

In the Matter, &c.

Whereas, by an order made by me in this matter on the day of 186 , it was ordered that A. B., one of the contributories of the said Company, should within days after service thereof on , pay to the official liquidator of the said Company, at the office of the said official liquidator, situate &c. (or into the Bank of England to the account, &c., as the case may be), the sum of £ , such sum being the balance appearing to be due from the said A. B. on account with the said Company : Now upon the application of the said official liquidator in this matter, and upon reading the affidavit of &c., I do order that service of the said recited order on &c., at &c., and on the solicitors of the said A. B., at &c., (as the case may be), be deemed good service on the said A. B.

No. 66.

Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England.

(No. 43, Rule 40.)

In Chancery.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

1. G. F., the person named in an order made in this matter by His Honor the Master of the Rolls [*or*, Vice-Chancellor], dated the day of , 186 , has not paid into the Bank of England, to the account of the official liquidator of the Company the whole or any part of the sum of £ as by the said order directed.

[*Or, in case of several parties,*]

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by His Honor the Master of the Rolls [*or*, Vice-Chancellor], of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of England to the account of the official liquidator of the Company, the whole or any part of the several sums of money set opposite to their respective names in the said schedule hereunder written, as by the said orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said bank, that such payment [*or*, payments] has [*or*, have] not been made, and seen the certificate of payment in, numbered [*or*, several certificates of payment in the numbers whereof respectively are set forth in the sixth

column of the said schedule, opposite the names of the said respective persons, being certificates] furnished by me to the cashier of the said bank for delivery to the said G. F. [*or*, several persons respectively] upon such payment [*or*, payments] being made, still in the hands of the cashier of the said bank. No notice [*or*, notices] of such payment [*or*, payments] having been made has [*or*, have] been given to me by the said G. F. [*or*, several persons respectively].

Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d.		

No. 67.

Request to invest Cash in Government Stock or Exchequer Bills.

(No. 44, Rule 43.)

In the Matter, &c.

To the Governor and Company of the Bank of England.
Gentlemen,

It appearing that the sum of £ cash is standing to the credit of the account of the official liquidator of the above named Company, you are hereby requested to

invest the sum of £ , part thereof, in the purchase of Bank £3 per cent. annuities [*or*, Reduced £3 per cent. annuities, *or*, New £3 per cent. annuities, *or*, New £2 10s. per cent. annuities] in the name of R. P. H., of &c., the official liquidator of the said Company, [*or*, in the purchase of Exchequer Bills, and to deposit such Exchequer bills in the Bank of England, in the name and on behalf of the said official liquidator.] The said annuities [*or*, Exchequer bills] are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said Company, and countersigned by the chief clerk of the Master of the Rolls [*or*, Vice Chancellor], or under an order to be made by the said Judge.

Dated this day of , 186 .

I am, Gentlemen,

Your most obedient servant,

R. P. H., official liquidator.

Countersigned,

G. H., chief clerk of the Master
of the Rolls [*or*, Vice Chancellor .]

No. 68.

Notice [or Advertisement] of Meeting of Creditors or Contributories.

(No. 45, Rules 45, 46.)

In the Matter, &c.

Notice is hereby given that the Master of the Rolls, [*or*, Vice Chancellor] has directed a meeting of the creditors [*or*, contributories] of the above named Company to be summoned pursuant to the above statute, for the

purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding up of the said Company], and that such meeting will be held on day, the day of 186 , at o'clock in the noon, at in the county of , at which time and place all the creditors [*or, contributories*] of the said Company are requested to attend. [The said Judge has appointed H. T., of &c., to act as chairman of such meeting.]

Dated this day 186 .

R. P. H., official liquidator.

No. 69.

Appointment of Proxy to Vote at Meeting of Creditors or Contributories.

(No. 46, Rule 46.)

In the Matter, &c.

I, W. S., of in the county of being a creditor [*or, contributory*] of the above named Company, hereby appoint of as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or, contributories*] of the said Company, summoned by direction of the Master of the Rolls [*or, Vice Chancellor*], to be held on the day of and at any adjournment thereof.

As witness my hand this day of 186 .

W. S.

Signed by the said W. S. }
in the presence of }
J. M., of &c.

No. 70.

Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories.

(No. 47, Rule 47.)

In the Matter, &c.

The Master of the Rolls [*or*, Vice Chancellor] has appointed Mr. H. T., of &c., one of the creditors [*or*, contributories] of the above named Company, to act as chairman of a meeting of the creditors [*or*, contributories] of the said Company, summoned by direction of the said Judge, pursuant to the above statute, to be held on day, the day of , 186 , at o'clock, in the noon, at , in the county of , and to report the result of such meeting to the said Judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [*or*, contributories] of the said Company as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or*, contributories] may be given either personally or by proxy.

Dated this day of 186 .

G. H.,
Chief Clerk.

No. 71.

Chairman's Report of Result of Meeting of Creditors or Contributories.

(No. 48, Rules 45, 46, 47.)

In the Matter, &c.

I, H. T., the person appointed by the Master of the Rolls [*or*, Vice Chancellor] to act as chairman of a meeting of the creditors [*or*, contributories], of the

above named Company, summoned by advertisement, [*or* notice] dated the day of 186 , and held on the day of 186 , at , in the county of , do hereby report to the said Judge the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said Company have been allowed, amounting in the whole to the value of £ [*or, by* contributories, holding in the whole shares in the said Company, and entitled respectively, by the regulations of the Company, to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or, contributories*] of the said Company approved of the proposal of the official liquidator of the said Company, that, &c. [*as the case may be*], and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [*or, should not*] be adopted and carried into effect. [*or, The result of the voting upon such question was as follows:*]

The undermentioned creditors [*or, contributories*] voted in favour of the said proposal being adopted and carried into effect:

Name of Creditor [<i>or</i> Contributory.]	Address.	Value of Debt [<i>or, Number</i> of Shares].	Number of Votes conferred on each Contri- butory by the Regulations of the Company.

No. 73.

Sketch of Affidavit in Support of Proposal to Compromise.
In Chancery.

In the Matter, &c.

I , of , make oath and say as follows:—

1. I have been fixed on the list of contributories of the above named Company for shares, and have had a call made on me of £ per share amounting to £ .

2. I am not possessed of or entitled to any property of any kind soever, whether in possession, reversion, remainder, or expectancy, or otherwise, save and except of the value of £ .

3. In the year I compounded with my creditors by paying them in the pound, and in the year I assigned my estate to my creditors upon having a release. I am now indebted to creditors whose debts have been incurred since the last mentioned assignment, in sums amounting to £ .

I now carry on business as a , at , in partnership with , and my income from such business amounts to £ per annum, but having regard to the nature of the business such income is very precarious, and entirely dependant on my own exertions. I have no capital in the business, and whatever assets there are therein belong to my said partner.

5. I am married, and have my wife and children to support, and my said income therefore is only sufficient for the purpose. The bulk of the household furniture at my private residence was settled on my wife and children by my wife's father in the year 18 .

6. I never had any beneficial interest in the shares for which I have been placed on the list of contributories, and I was advised and believed that I was undertaking

no personal liability in respect thereof when I became the holder thereof.

7. Under these circumstances a friend has agreed to advance me £ in order to enable me to settle the claim made by the official liquidator in respect of the before mentioned call, and I offer that sum in full satisfaction of the call now made upon me in respect of the shares and of all future calls whatever.

(The above is merely a sketch of the form of affidavit required by the official liquidator, as every affidavit must be adapted to the circumstances of each case.)

No. 74.

*Memorandum of Agreement of Compromise with a
Contributory.*

(No. 50, Rule 49.)

In the Matter, &c.

Memorandum of agreement, entered into this day of 186 , between R. P. H., of &c., the official liquidator of the above named Company of the one part, and S. B., of &c., one of the contributories of the said Company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said Company as a contributory in respect of shares in the said Company. And whereas, by an order made by the Master of the Rolls [or, Vice Chancellor], dated the day of 186 , a call of £ per share was made on all the contributories of the said Company, and there is now due from the said S. B. to the said Company the sum of £ in respect of the said call. And whereas

the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever, as a contributory of the said Company. And whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said Company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said Judge and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto :

1st. That the said official liquidator shall, before the day of next, apply to the said Judge at Chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said Judge, the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ , and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said official liquidator on behalf of the said Company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said Company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said Company in respect of the said shares, or the distribution of the assets of the said Company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said Company, or the official liquidator thereof,

now has or may hereafter have or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said Company.

4th. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H., Official Liquidator.
S. B.

Witness to the signatures }
of the said R. P. H. and S. B. }
C. D., of &c.

No. 75.

*Memorandum of Sanction of Judge to Agreement of
Compromise.*

(No. 51, Rule 49.)

In the Matter, &c.

The Master of the Rolls [*or*, Vice Chancellor]
has sanctioned this agreement of compromise.

G. H.,
Chief Clerk.

No. 76.

Summons for Persons to attend at Chambers to be examined.

(No. 54, 25 & 26 Vict. c. 89, s. 115.)

In Chancery.

In the Matter, &c.

A. B., of &c., and E. F., of &c., are hereby severally summoned to attend at the chambers of the Master of the Rolls [*or*, Vice Chancellor], in the Rolls Yard, Chancery Lane [*or*, No. Lincoln's Inn], in the county of Middlesex, on day of 186 , at of the clock in the noon to be examined on the part of the official liquidator [*or*, of W. D., of &c.], for the purpose of proceedings directed by the Master of the Rolls [*or*, the said Vice Chancellor] to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*] and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above named Company.]

Dated this day of 186 .

G. H.,
Chief Clerk.

This summons was taken out by Messrs. C. & D., of in the county of , solicitors for the official liquidator [*or*, for the said W. D.].

No. 77.

Notice of Examination of Witnesses before Examiner.

In Chancery.

In the Matter of, &c.

We hereby give you notice, that A. B., of &c., the applicants named in the summons issued in this matter, dated the day of 186 , intend to examine C. D. of &c., and E. F., of &c., before Esq., one of the examiners of the Court, for the purpose of taking their evidence to be used on the hearing of the said summons. And we further give you notice that the said examiner has appointed to take the said examination on the day of 186 , at in the noon at the Examiner's Office, No. Rolls Yard, Chancery Lane, London.

Dated, &c.

N.B.—*This Form can easily be adapted to an examination before the Chief Clerk or before a special Examiner.*

No. 78.

Affidavit in support of Proof under a Bankruptcy for Calls.

The Bankruptcy Act, 1861.

In the Court of Bankruptcy.

In the Matter of A. B., of &c., a bankrupt.

W. T., of &c., accountant, the official liquidator of &c., maketh oath and saith, that the said A. B., the person against whom a petition for adjudication of bankruptcy hath been lately filed and is now in prosecution, was, at and before the filing of the said petition for

adjudication of bankruptcy, and still is, justly and truly indebted to the said Company, in the sum of £ , being the amount (or balance) due by the said bankrupt in respect of a call of £ per share made in the winding up of the said Company on the day of last, by His Honor the , for which said sum of £ , or any part thereof, this deponent saith that he hath not; nor hath any person by his order or by the order of the said [Vice Chancellor or Master of the Rolls], to this deponent's knowledge or belief, for the use of this deponent, as the official liquidator of the said Company, or for the use of the said Company, had or received any security or satisfaction whatsoever.

Sworn, &c.

— — —

No. 79.

Clause to be inserted in every Agreement for Sale by Private Contract, subject to the Sanction of the Court.

Provided that this agreement is not to be of any effect unless the sanction of the Judge of the Court of Chancery in the matter of the Company's Act, 1862, and of the Company, be obtained thereto on or before the day of 186 .

— — —

No. 80.

Summons to carry into effect Contract.

[Commence as in Form No. 11.] on the application

of W. T., the official liquidator of the above named Company, that the conditional agreement dated the day of 186 , entered into between the applicant of the first part, and C. D. of &c., of the second part, for &c., [*describe nature and short particulars of the agreement*], may be carried into effect. And that the costs of this application may be costs in the above mentioned matter.

Dated the, &c., [*as in Form No. 11*].

No. 81.

Order to carry into effect Contract.

In the Court of Chancery the day of 186 .

In the Matter of the Company's Act, 1862, and
of the

Upon the application of W. T., the official liquidator of the said Company, and upon hearing the solicitor for the applicant and for , and upon reading, &c.: It is ordered that the said conditional agreement, dated the day of 186 , for [*state nature and short particulars of agreement*], be carried into effect, and that the costs of this application be costs in this matter.

No. 82.

Formal Conditions of Sale.

No person is to advance less than £ at each bidding.

The sale is subject to a reserved bidding, which has been fixed by the Judge, to whose Court this matter is attached.

The purchaser is, at the time of sale, to subscribe his name and address to his bidding (in the bidding paper), and the abstract of title and all written notices and communications and summonses, are to be deemed duly delivered to and served upon the purchaser, by being left for him at such address unless or until he is represented by a solicitor.

The purchaser is at the time of sale to pay a deposit of per cent. on the amount of his purchase-money to the auctioneer.

The chief clerk of the will, after the sale, proceed to certify the result; and the day of , 186 , at of the clock , is appointed for the time at which the purchaser may, if he thinks fit, attend by his solicitors at the chambers of the said Judge, situate, &c., to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchaser.

The vendor is, within days after such certificate has become binding, to deliver to the purchaser or his solicitor an abstract of the title to the said subject to the stipulations contained in these conditions. And the purchaser is, within days after the actual delivery of the abstract, to deliver at the office of a statement in writing of his objections and requisitions, if any, to or on the title as deduced by such abstract, and upon the expiration of such last mentioned time, and in this respect time is to be deemed of the essence of the contract; the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any. [*Here insert special conditions.*]

The purchaser is, under an order to be obtained by him, or, in case of his neglect, by the vendor, at the costs of the purchaser, upon application at the chambers of the said Judge, to pay the amount of his purchase-money, after

deducting the amount paid as a deposit, into the Bank of England, to the account of the official liquidator of the Company, on or before the day of , 186 , and if the same is not so paid the purchaser is to pay interest on his purchase-money at the rate of £5 per cent. per annum, from the day of , 186 to the day on which the same is actually paid, deducting property tax. Upon payment of the purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of 186 , down to which time all outgoings are to be paid by the vendor.

If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the Judge at chambers.

If the purchaser shall make any valid objection or requisition which the vendor may be unable to remove or comply with, such purchaser may be discharged from being purchaser by an order of the said Judge, and notwithstanding intermediate negotiation, such purchaser shall be entitled to a return of his deposit, but shall not, unless the said Judge shall otherwise direct, be entitled to any interest, costs and expenses, or damages, in respect of his purchase.

If the purchaser shall not pay his purchase-money at the time specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge, or any other Judge of the Court of Chancery, upon application at chambers, for the re-sale of the property purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the

price which may be obtained upon such re-sale, and of all costs and expenses occasioned by such default.

No. 83.

Sketch of Assignment of Premises belonging to Company on Sale by Official Liquidator under the Order of the Court.

This indenture made the, &c., between the Company limited hereinafter called the said Company of the first part, W. T. of &c., accountant, the official liquidator of the said Company, of the second part, and C. D. of &c., of the third part. Whereas [*recite the title of the Company to the premises in question*]. And whereas, by an order of the High Court of Chancery, made by his Honor the Vice Chancellor bearing date the day of 186 , made in the matter of the Companies Act, 1862, and of the said Company limited, it was ordered that the said Company be wound up by the said Court under the provisions of the said Companies Act, 1862, and whereas, by another order made by the said Court in the said matter, the said Judge did thereby appoint W. T.; of &c., official liquidator of the said Company; and whereas, on the day of 186 , the premises hereinbefore described were, with the approbation of the said Judge, put up to sale by public auction by Messrs. F. and K., the persons appointed by the said Judge, at &c., at which sale the said C. D. became the purchaser thereof, at or for the price or sum of £ , and whereas the chief clerk of the said Judge by his certificate dated the day of 186 , certified the result of the said sale, and the said Judge settled the said certificate and signed his approval thereof on the day of 186 , and thereby

allowed the said C. D. to be the purchaser of the said [describe premises shortly] at the price aforesaid; and the said certificate was filed in the Court of Chancery on the day of last. And whereas, by an order dated the day of last, made by the said Judge in the said matter upon the application of the said C. D., it was ordered that the said C. D. should, on or before the day of 186 , pay the said sum of £ , his purchase money for the said hereditaments intended to be hereby conveyed (or assigned, as the case may be), with the sum of £ , interest at the rate of £5 per cent. per annum on the said sum of £ from the day of 186 , making together the sum of £ into the Bank of England to the account of the official liquidator of the said Company, and thereupon it was ordered that all proper parties should join in and execute a proper assignment and assurance of the said hereditaments hereinafter described, and intended to be hereby assigned and assured, unto the said C. D., or as he should direct, and that for that purpose the said W. T. should execute in the name and on behalf of the Company all necessary deeds and receipts and use the Company's seal. And whereas, in accordance with the said order, the said C. D., on the day of last, paid the said sum of £ into the Bank of England to the account of the official liquidator of the said Company as aforesaid. Now this Indenture witnesseth that, in consideration of the said sum of £ of lawful British money in full of the said purchase money in hand paid by the said C. D. in manner aforesaid, with the privity and consent of the said Company (testified by their executing these presents) the payment of which said sum of £ in manner aforesaid, and that the same is in full for the absolute purchase of the hereditaments and premises hereby assigned or intended so to be, they the said Company and the said W. T. do hereby respectively

acknowledge and from the same do acquit and discharge the said C. D., his executors, administrators and assigns, by these presents : The said Company doth hereby assign, and the said W. T. doth ratify and confirm unto the said C. D., his executors, administrators and assigns, all &c., to have and to hold the said hereditaments and premises, and all and singular other the premises hereby assigned unto the said C. D., his executors, administrators and assigns, for &c. And the said W. T. doth hereby, for himself, his heirs, executors and administrators, covenant and agree with the said C. D., his executors, administrators and assigns, that he the said W. T. hath not executed, done, or knowingly suffered or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said hereditaments and premises hereby assigned or expressed or intended so to be, or any part thereof, are, is or may be impeached, charged, affected or incumbered in title, estate or otherwise howsoever. [And this Indenture further witnesseth, that he the said C. D. doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said Company, and the said W. T. his executors, administrators and assigns, that he the said C. D., his executors, administrators and assigns, shall and will from time to time during the remainder of the said term of years hereby assigned or intended so to be, well and truly pay or cause to be paid the said rent in and by the said indenture of lease reserved and contained unto such person or persons as shall for the time being be entitled to receive the same, and which from the said day of 186 , shall grow due, and shall and will well and truly observe, perform, fulfil and keep all and singular the covenants, conditions and agreements in and by the said Indenture of lease reserved and contained, and which, from the said day of 186 , on the part of the lessee, his executors, administrators or assigns, are or ought to be observed, performed, fulfilled and kept, and of and from

the payment of the said rent and performance of the covenants and agreements in the said Indenture of lease reserved and contained, shall and will for ever hereafter save, defend, keep harmless and indemnified the estate of the said Company, and the said W. T., his executors, administrators and assigns.] In witness, &c.

N.B.—*It is not usual for a Company in the course of being wound up under the order of the Court, to enter into any covenants, and as a precaution a provision to that effect might be inserted in the conditions of sale.*



No. 84.

Official Liquidator's Account.

In Chancery.

In the Matter, &c.

The account of W. T., the official liquidator of
the above mentioned Company, from the day of
to the day of inclusive.

RECEIPTS.

PAYMENTS.

186 .		£ s. d.	186 .		£ s. d.



No. 85.

Affidavit verifying Account and of Life of Sureties.

In Chancery.

In the Matter, &c.

I, W. T., of &c., the official liquidator appointed in this matter, make oath and say as follows:—

1. I say that the account contained from page to both inclusive in each of the two several books marked with the letters A and B, produced and shewn to me at the time of swearing this my affidavit, and purporting to be my account of monies and securities received by me since the day of , 186 , to the day of , 186 , both inclusive, doth contain a true account of all and every sum and sums of money received by me or by any other person or persons by my order or to my knowledge or belief for my use by or on account or in respect of the said Company.

2. And I further say that the several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. And I further say that the said account is just and true in all and every the items and particulars therein contained according to the best of my knowledge and belief.

4. And I further say that my sureties in this matter are still living, and that they have not been either bankrupt or insolvent. My surety A. B. still resides at the address described in the recognizance entered into by him, but my other surety, C. D., has since changed his residence, and now resides at in the of .

No. 86.

Certificate on Official Liquidator's Account.

186 .

In the Matter, &c.

In pursuance of the directions given me by , I hereby certify that in pursuance of the order made in this matter, dated the day of , 186 , and of the certificate dated the day of , 186, W. T., the official liquidator of the said Company, has left in the Chambers of the said Judge his first account as such official liquidator, of his receipts and payments and allowances in respect of the said Company from the time of his appointment the day of , 186 , to the day of , 186 , both inclusive, and such account has been passed and allowed, and the same account as so passed and allowed is entered in a book remaining in the said Judge's chambers, and signed by me, and is verified by the affidavit of the said official liquidator, filed the day of 186 , and a duplicate of the said account has been entered in another and signed by me, and delivered to the official liquidator's solicitors. The said receipts amount altogether to the sum of £ , and the said payments and allowances to the sum of £ , leaving the sum of £ , due the said official liquidator.

Dated this day of , 186 .

Chief Clerk.

Approved this day of , 186 .

No. 87.

Order for Taxation and Payment of Costs.

Master of the Rolls, day of 186 .

At Chambers.

In the Matter, &c.

Upon the application of the official liquidator of the said Company, and upon hearing the solicitor for the applicant, and upon reading [*enter evidence*]: It is ordered that it be referred to the Taxing Master to tax the applicant's costs, charges, and expences incurred by him in these matters, from the to the , including therein the costs of this application (and the costs, charges, and expenses of the petitioner relating to the petition and order for winding up). And it is ordered that such costs, charges, and expences, when taxed, be allowed and retained by the official liquidator out of the estate of the said Company.

No. 88.

*Certificate of the Company being completely wound up,
and of the Official Liquidator having passed his final
Account.*

(No. 55, Rule 66.)

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or, Vice Chancellor*], I hereby certify that R. P. H., the official liquidator of the above named Company, has passed his final account as such official liquidator, And that the balance of £ thereby certified to be due to [*or, from*] the said official liquidator has been paid in the manner directed by the order dated the day of , 186 , And that the affairs of the said Company have been completely wound up.

The evidence produced, &c.

Dated this day of 186 .
G. H.,
Chief Clerk.

Approved the
day of 186 . }

No. 89.

Order to Dissolve the Company.

(No 56, Rule 66.)

The Master of the Rolls [*or*,
Vice Chancellor
at Chambers.] } day of , the 186 .
In the Matter, &c.

Upon the application of the official liquidator of the above named Company, and upon reading an order dated the day of , and the chief clerk's certificate, dated the day of , whereby it appears that the affairs of the said Company have been completely wound up, and that the balance of £ , due from [or, to] the official liquidator, has been paid in manner directed by the said order, It is ordered that the said Company be dissolved as from this day of , 186 , and that the recognizance dated the day of , 186 , entered into by the said official liquidator, together with W. B. and T. P., his sureties, be vacated.

No. 90.

Notice of General Meeting for the Purpose of Passing a Resolution to Wind Up Voluntarily, and to Appoint Liquidator.

The Company (Limited).

Notice is hereby given that an extraordinary general meeting of this Company will be held on the day of instant, at of the clock in the noon, at , for the purpose of submitting to the Company the following extraordinary resolutions:—

“That it has been proved to the satisfaction of the Company that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and that accordingly the Company be wound up voluntarily under the provisions in that behalf of the Companies Act, 1862.

“That A. B., of &c., be appointed liquidator for the purpose of winding up the affairs of the Company and distributing the property thereof.”

Dated this day of , 186 .

By order of the Directors,

C. D.,
Secretary.

No. 91.

Resolutions to Wind Up Voluntarily and Appoint Liquidator.

The Company (Limited).

At an extraordinary general meeting of this Company, held on the day of 186 , at .

Present—

It was moved by seconded by and carried unanimously :

That it had been proved to the satisfaction of the Company that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and that accordingly the Company be wound up voluntarily under the provisions in that behalf of the Companies Act, 1862.

Moved by seconded by and carried unanimously :

That A. B., of &c., be appointed liquidator for the purpose of winding up the affairs of the Company and distributing the property thereof.

C. D.,
Chairman.

[See Form in Petition No. 3.]

COSTS.

Precedent No. 1.

Petition to Wind Up a Company Compulsorily.
In Chancery.

In the Matter of The Companies Act, 1862,
and
In the Matter of (The Company).
Term, 186 .

	£	s.	d.
Instructions for petition to wind up * -	-	0	13 4
Drawing same (1s. per folio) folios 20 -	-	1	0 0
Fee to counsel to settle -	-	2	4 6
Attending him -	-	0	6 8
Attending to appoint conference -	-	0	6 8
Fee to counsel thereon -	-	1	6 0
Attending him -	-	0	6 8
Retainer to Mr. , Q.C. -	-	1	3 6
Attending him -	-	0	6 8
Engrossing petition, 4d. per folio (20) -	-	0	6 8
Copy for the Vice Chancellor -	-	0	6 8
The like for service -	-	0	6 8
Attending presenting petition -	-	0	6 8
Paid stamp thereon -	-	1	0 0
Service thereof -	-	0	5 0
(If served in the country, charge agent's charges)			
Instructions for affidavit in support -	-	0	6 8

* Any special attendances and conferences with counsel to advise as to steps to be taken with respect to winding up may be charged prior to this item.

COSTS.					299		
					£	s.	d.
Drawing same and copy, folios 3	-	-			0	4	0
Attending petitioner to be sworn	-	-			0	6	8
Paid oath and exhibit, 2s. 6d., preparing exhibit, 1s. 9d.	-	-	-	-	0	3	6
Paid filing	-	-	-	-	0	2	6
Office copy	-	-	-	-	0	1	0
Notice thereof, copy and service	-	-			0	2	6
Drawing advertisement of petition, folios 6	-				0	6	0
Three copies for insertion in "Gazette" and 2 papers	-	-	-	-	0	6	0
Attending inserting advertisement in "London Gazette"	-	-	-	-	0	6	8
Paid, and for papers	-	-	-	-			
Attending inserting in "Times" and "Daily News," or in two local newspapers	-	-			0	6	8
Paid insertion in " " and for paper	-						
Paid insertion in " " and for paper	-						
Drawing affidavit of service and copy, folios 6, at 1s. per folio	-	-	-	-	0	6	0
Attending deponent to be sworn	-	-			0	6	8
Paid oath and filing	-	-	-	-	0	4	0
Office copy	-	-	-	-	0	2	0
(Similar charges for affidavit of insertion of advertisements)							
Fee to counsel to advise on evidence	-	-			1	3	6
Attending him	-	-	-	-	0	6	8
Instructions for special affidavit in support of petition	-	-	-	-	0	6	8
Drawing same, folios 20, 1s. per folio	-	-			1	0	0
Fee to counsel to settle	-	-	-	-	2	4	6
Attending him	-	-	-	-	0	6	8
Engrossing affidavit, 4d. per folio	-	-	-	-	0	6	8
Attending deponent to be sworn	-	-			0	6	8
Paid oath and exhibit	-	-	-	-	0	2	6
Preparing exhibit	-	-	-	-	0	1	0
Paid filing	-	-	-	-	0	2	6

	£	s.	d.
Office copy - - - - -	0	6	8
Notice of filing copy and service - -	0	2	6
Paid for copy affidavit in opposition to petition, folios 15, at 4 <i>d.</i> per folio - -	0	5	0
Perusing same - - - - -	0	5	0
Two brief copies petition, two brief sheets, 3 <i>s.</i> 4 <i>d.</i> per sheet of 10 folios - -	0	13	4
The like affidavits in support (say four brief sheets) - - - - -	1	6	8
The like affidavits in opposition, two brief sheets	0	13	4
Drawing observations and copy two brief sheets, (6 <i>s.</i> 8 <i>d.</i> per sheet drawing, and 3 <i>s.</i> 4 <i>d.</i> per sheet copying) - - - -	1	6	8
Fee to Mr. , Q.C., and clerk - - - -	6	12	0
Attending him - - - - -	0	13	4
Attending to appoint consultation - - -	0	6	8
Fee to Mr. , Q.C., thereon - - - -	2	9	6
Fee to Mr. and clerk, with brief - - -	4	6	6
Attending him - - - - -	0	6	8
Attending to appoint consultation - - -	0	6	8
Fee to Mr. and clerk thereon - - - -	1	3	6
Attending consultation - - - - -	0	13	4
Attending Court on petition, same ordered to stand over for cross-examination of witnesses who had made affidavits - - - -	1	1	0
[If a special examiner is appointed, charge			
Attending registrar with paper - - - -	0	6	8
Notice to settle order, copy, and service -	0	2	6
Close copy order, two sides, 6 <i>d.</i> per side -	0	1	0
Attending settling order - - - - -	0	13	4
Notice of passing order, copy, and service	0	2	6
Paid for order - - - - -	1	0	0
Attending passing - - - - -	0	13	4
Copy order for special examiner, folios 6]	0	2	0
Attending examiner of the Court or special examiner for appointment - - - - -	0	6	8

COSTS.				301		
				£	s.	d.
Paid fee of the examiner of the Court	-					
Notice of appointment to cross-examine, copy, and service	-	-	-	0	2	6
Fee to counsel and clerk to attend cross-examination	-	-	-	3	5	6
Attending him	-	-	-	0	6	8
Attending cross-examination, not to exceed per diem	-	-	-	2	2	0
(Paid special examiner's fees)						
Attending bespeaking office copy, cross-examination	-	-	-	0	6	8
Paid for same	-	-	-			
Fee to counsel to apply to have petition put in paper for hearing	-	-	-	1	3	6
Attending him	-	-	-	0	6	8
Attending Court on application being made, same ordered	-	-	-	0	13	4
Attending Lord Chancellor's Secretary informing him thereof	-	-	-	0	6	8
Notice to the opposite side, copy, and service	-			0	2	6
Two brief copies cross-examination for counsel, six brief sheets, each	-	-	-	2	0	0
Drawing observations and two copies, one brief sheet, each	-	-	-	0	13	4
(Further fees to counsel charge as above)						
Attending Court on petition order made, 1 guinea, or not to exceed per diem	-			2	2	0
Attending shorthand writer, instructing him to take note of judgment	-	-	-	0	6	8
Paid his charges	-	-	-			
Attending registrar with papers and bespeaking order	-	-	-	0	6	8
Close copy minutes of order, 4 sides, 6d. per side				0	2	0
Notice of settling, copy, and service	-			0	2	6
Attending settling	-	-	-	0	13	4
Paid for order	-	-	-	1	0	0

	£	s.	d.
Attending passing same - - -	0	13	4
Preparing summons for appointment of provisional official liquidator and attending to get same sealed - - -	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor, 2s. - - -	0	5	0
Copy and service - - -	0	4	6
(Charge for affidavit of fitness of proposed liquidator and generally in support of summons, as in Precedent No. 3)			
Attending summons when W. T. was appointed provisional official liquidator - - -	0	13	4
Preparing, drawing up and entering order - - -	0	13	4
Stamp thereon - - -	0	5	0
Engrossing order - - -			
Charge for advertisement of the appointment and also for the appointment of solicitor as in Precedent No. 3 - - -			
If the costs of the petition are taxed separately, see charges at the end of Precedent No. 3			
Term fee - - -	0	15	0
Letters, &c. (in country cases) - - -	0	6	8

Precedent No. 2.

Costs of Respondent on opposing Petition.

Term, 186 .

Instructions to oppose petition - - -	0	13	4
Paid for copy affidavit of in support of petition, folios 3 - - -	0	1	0
Perusing same - - -	0	1	0
Paid for copy special affidavit in support, folios 20 - - -	0	6	8
Perusing same - - -	0	6	8

COSTS.

303

	£	s.	d.
Instructions for affidavit in opposition -	0	6	8
Drawing same, folios 30 -	1	10	0
Engrossing -	0	10	0
Attending deponent to be sworn -	0	6	8
Paid oath 1s. 6d., and 4 exhibits, 4s. -	0	5	6
Preparing exhibits -	0	4	0
Paid filing 2s. 6d., office copy, 10s. -	0	12	6
Notice of filing copy and service -	0	2	6
(Same charge for other affidavits in opposition)			
Paid for copy affidavit in reply, folios 10 -	0	3	4
Perusing same -	0	3	4
(Charge for briefs and fees to counsel as in last Precedent)			
Attending Court when petition ordered to stand over for cross-examination of witnesses who had made affidavits in opposition -	1	1	0
Having been served with notice of appointment before Examiner of Court -			
Preparing writ of subpoena ad test., and attending to issue -	0	6	8
Stamp thereon -	0	5	0
Two copies for service -	0	2	0
Preparing notice to serve with subpoena (where necessary) -	0	2	0
Two copies for service -	0	2	0
Service of subpoena and notice on A. B. in town	0	5	0
Paid him -			
The like on C. D. at Greenwich -	0	13	4
(See 3rd Schedule to Consolidated Orders.)			
Paid him -			
(See order 5th February, 1861, as to the above costs for attendance of witnesses.)			
Fee to counsel to attend cross-examination -	3	5	6
Attending him -	0	6	8
Attending cross-examination 6s. 8d. per hour, and not to exceed 2 guineas -			

Paid petitioner's solicitor for copy cross-examination, folios 30	-	-	-	-	£	s.	d.
					0	10	0
(If cross-examination is at the instance of the respondents, see charges in Precedent No. 1.)							
Two brief copy cross-examination, 3 brief sheets					1	0	0
Drawing observations and 2 copies, 2 brief sheets	-	-	-	-	1	6	8
(Fees to counsel as on hearing of petition.)							
Attending Court, petition heard and order made					1	1	0
Close copy minutes of order, 3 sides	-	-			0	1	6
Attending settling	-	-	-	-	0	13	4
Attending to pass order	-	-	-	-	0	13	4
Drawing bill of costs and copy, 8d. per folio, folios 15	-	-	-	-	0	10	0
Warrant on leaving copy and service	-	-			0	5	6
The like to tax	-	-	-	-	0	5	6
Attending taxing	-	-	-	-	0	6	8
Term fee	-	-	-	-	0	15	0
Letters &c. in country cases	-	-	-	-	0	6	8

Precedent No. 3.

Costs of Official Liquidator under Order to Wind Up.

Term, 186 .

Fair copy order for the chief clerk, folios 10	-	0	3	4
Preparing summons to proceed thereon and attending to issue same	-	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor, 2s.	-	0	5	0
Copy and service (2s. copy and 2s. 6d. service)		0	4	6
Preparing summons for stay of proceedings in action by a creditor against the Company, and attending to issue	-	0	6	8

	£	s.	d.
Stamp thereon 3s., copy for the Vice Chan- cellor, 2s. - - - - -	0	5	0
Copy and service - - - - -	0	4	0
(Affidavit of service as in Precedent No. 1)			
Attending summons, order made - - - - -	0	13	4
Notice of order, copy and service - - - - -	0	4	6
(The order being drawn up by the registrar)			
Notice of settling order, copy and service - - - - -	0	2	6
Close copy order, 3 sides - - - - -	0	1	6
Attending settling - - - - -	0	13	4
Paid for order - - - - -	1	0	0
Notice of passing, copy and service - - - - -	0	2	6
Attending passing - - - - -	0	13	4
Preparing injunction and engrossing same and docket - - - - -	1	0	0
Or 1s. 4d. per folio.			
Copy injunction for service - - - - -			
Service thereof (or) - - - - -	0	5	0
Attending at Barnet to serve same, 13s. 4d.			
Paid expences - - - - -			
Preparing summons for delivery of books and papers belonging to Company to the official liquidator, and attending to issue - - - - -	0	6	8
Stamp thereon, 3s., copy for the Vice Chan- cellor, 2s. - - - - -	0	5	0
Copy and service - - - - -	0	4	6
Attending same, order made - - - - -	0	13	4
Preparing order, attending for same, and attending to enter - - - - -	0	13	4
Stamp thereon - - - - -	0	5	0
Engrossing order, folios , 4d. per folio - - - - -			
(If the order is drawn up by the registrar charge accordingly.)			
Copy order for service - - - - -			
Endorsing notice thereon - - - - -	0	2	0
Service thereof - - - - -	0	5	0

	£	s.	d.
Attending summons to proceed on order to wind up when a day was named for the appointment of an official liquidator, and directions given for an advertisement thereof to be issued - - - - -	0	13	4
Drawing advertisement and fair copy, and attending to get signature of chief clerk thereto - - - - -	0	13	4
Stamp thereon - - - - -	1	0	0
Attending to insert same in "London Gazette"	0	6	8
Paid and for paper - - - - -			
Two copies for insertion in papers, folios 4 -	0	2	8
Attending to insert same in two London daily newspapers or two local newspapers -	0	6	8
Paid for insertion (charge each paper) -			
Drawing affidavit of the due insertion thereof and copy (1s. per folio), folios 6 - -	0	6	0
Attending to be sworn - - - - -	0	6	8
Paid oath and filing - - - - -	0	4	0
Office copy - - - - -	0	2	0
Drawing proposal for appointment of W. T. as official liquidator and copy, folios 4 -	0	6	0
Attendances on shareholders and contribu- tories, obtaining their signatures to same, 6s. 8d. each, or according to circumstances -			
Instructions for affidavit of fitness of proposed official liquidator - - - - -	0	6	8
Drawing same, folios 7, and copy - - -	0	9	4
Attending deponent to be sworn - - -	0	6	8
Paid oath and filing, 4s., office copy, 2s. 4d. -	0	6	4
Drawing affidavit, verifying signatures to pro- posal, folios 10, and copy - - - - -	0	13	4
Attending deponent to be sworn - - -	0	6	8
Paid oath, 1s. 6d., and exhibit, 1s. - - -	0	2	6
Preparing exhibit - - - - -	0	1	0
Paid filing, 2s. 6d., office copy, 3s. 4d. -	0	5	10

	£	s.	d.
Attending meeting for the appointment of an official liquidator when W. T. was appointed (if allowed by chief clerk) - - -	2	2	0
Preparing and drawing up order and entering same - - - - -	0	13	4
Engrossing order, folios 8 - - - - -	0	2	8
Stamp thereon - - - - -	0	5	0
Drawing and fair copy appointment of solicitor to official liquidator, 2 folios - - -	0	2	8
Attending the official liquidator, obtaining his signature thereto - - - - -	0	6	8
Attending chief clerk for and obtaining the sanction of the Judge thereto - - -	0	6	8
(Charge for advertisement in "London Gazette" of the appointment of official liquidator the same as last advertisement.)			
Preparing memorandum for registration of order to wind up as a <i>lis pendens</i> against A. B., one of the shareholders, and copy -	0	5	0
Attending registering - - - - -	0	3	4
Paid - - - - -	0	2	6
Similar charge for registering order against any other of the shareholders - - -			
Attending chief clerk for directions as to official liquidator's recognizances and sureties, affidavits of assets, &c. - - - - -	0	6	8
Instructions for affidavit of official liquidator as to assets of Company, to enable chief clerk to settle amount of recognizances - -	0	6	8
Drawing and fair copy same, folios 10 - -	0	13	4
Attending deponent to be sworn - - -	0	6	8
Paid oath and filing 4s., office copy 3s. 4d. -	0	7	4
Instructions for recognizance - - - - -	0	6	8
Drawing same, folios 16 - - - - -	0	16	0
Attending chief clerk settling recognizance, allowed - - - - -	2	2	0

	£	s.	d.
Engrossing recognizances, folios 16 - -	0	4	0
Stamp thereon - - -	1	15	0
Instructions for affidavit of sureties - -	0	6	8
Drawing same, folios 4, and fair copy - -	0	5	4
Attending deponents to be sworn - -	0	6	8
Paid two oaths 3s., filing 2s. 6d. office copy 1s. 4d.	0	6	10
Attending official liquidator on his acknow- ledging recognizance - - -	0	6	8
Paid commissioner's fee - - -			
Attending the sureties on their acknowledging recognizance - - -	0	6	8
Paid commissioner's fee - - -			
Attending chief clerk with recognizance, obtain- ing his allowance thereof - - -	0	6	8
Attending to enrol - - -	0	6	8
Paid - - -	0	7	6
Notice of appointment of official liquidator for Bank of England and service - - -	0	5	0
Paid for two office copies order appointing official liquidator for the Bank of England and registrar of Joint Stock Companies, folios 10, each - - -	0	6	8
Attending the bank therewith - - -	0	6	8
The like registrar of Joint Stock Companies - -	0	6	8
Copy draft certificate of appointment of official liquidator, folios 6 - - -	0	2	0
Attending to settle - - -	0	13	4
Engrossing certificate - - -	0	2	0
Attending to sign - - -	0	6	8
Stamp on certificate - - -	0	5	0
Attending to bespeak office copy thereof - -	0	6	8
Paid for same - - -	0	2	0
Attending the official liquidator as to the steps to be taken on the winding up, the state of the assets, liabilities, &c. - - -	0	13	4

	£	s.	d.
Attending adjourned appointment on summons to consider order to wind up when a day was named for the creditors to send in their claims to the official liquidator, and prove same where necessary	0	13	4
(Charge for advertisement for creditors as above)			
Copy petition for the official liquidator to file, folios 20	0	6	8
Attending the official liquidator on various disputed claims and advising (all reasonable attendances will be allowed.)			
Instructions for affidavit of official liquidator verifying list of claims	0	6	8
Drawing same and copy, folios 5	0	6	8
Attending him to be sworn	0	6	8
Paid oath and exhibit 2s. 6d., paid filing 2s. 6d., office copy 1s. 8d., preparing exhibit, 1s.	0	7	8
Preparing notice to 20 creditors to come in and prove their debts and service thereof, 1s. 6d. each	1	10	0
(Charge for affidavit of service of notice if required)			
Attending to bespeak office copy, affidavits of creditors whose debts had to be proved	0	6	8
Paid for office copy affidavit of a creditor, folios (Similar charge for office copy affidavits by creditors)			
Attending appointment to proceed on claims and allowed, not to exceed per diem	5	5	0
(Charge all further attendances.)			
Copy list of claims for chief clerk, folios 20	0	6	8
Fair copy certificate on claims, folios 30	0	10	0
Notices of settling same copies and services, 2s. 6d. each, or 1s. 6d. each if very numerous. See Rules 11th November, 1862			
Attending settling	0	13	4

	£	s.	d.
Engrossing certificate, folios 30 - - - - -	0	10	0
Stamp thereon - - - - -	0	5	0
Attending to sign - - - - -	0	6	8
Attending to bespeak office copy - - - - -	0	6	8
Paid - - - - -	0	10	0
Attending the official liquidator as to the list of contributories and the means of fixing them, going through minute book, memorandum and articles of association, transfers, &c., and advising, in all 100 contributories at 3s. 4d. each - - - - -	16	13	4
Engrossing list of contributories, folios 80, 4d. per folio - - - - -	1	6	8
Instructions for affidavit of official liquidator, verifying list of contributories - - - - -	0	6	8
Drawing same, folios 4, and copy - - - - -	0	5	4
Attending him to be sworn - - - - -	0	6	8
Paid oath 1s. 6d., exhibit 1s., preparing exhibit 1s. - - - - -	0	3	6
Paid filing 2s. 6d., office copy 1s. 4d. - - - - -	0	3	10
Attending adjourned summons to proceed on order to wind up when the list of contributories was carried in and a day fixed to settle same - - - - -	0	6	8
(Charge for advertisement of meeting to settle list as above) - - - - -			
Notice to contributories of the time and place appointed to settle list, 100 in number, at 1s. 6d. each - - - - -	7	10	0
Drawing affidavit, verifying service of notice to settle list of contributories and copy, folios 9, (1s. per folio, drawing and copy) - - - - -	0	9	0
Making copy list of contributories, as an exhibit, folios 80 - - - - -	1	6	8
Ditto notice as an exhibit - - - - -	0	1	6
Attending deponent to be sworn - - - - -	0	6	8

COSTS.		311		
		£	s.	d.
Paid oath 1s. 6d., 2 exhibits 2s., preparing exhibits, 2s.	- - - - -	0	5	6
Paid filing 2s. 6d., office copy 3s.	- - - - -	0	5	6
Paid for office copy affidavit of L. N., in opposition to his being placed on the list of contributories, folios 10	- - - - -	0	3	4
Perusing same	- - - - -	0	3	4
(Similar charge for any other affidavits in opposition)	- - - - -			
Attending appointment to settle list of contributories and proceeded, disputed cases adjourned, (as allowed by chief clerk)	-	5	5	0
Preparing summons for witnesses and attending to get same sealed	- - - - -	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor 2s.	- - - - -	0	5	0
Three copies for service, 2s. each	- - - - -	0	6	0
Service thereof on A. B.	- - - - -	0	2	6
Mileage	- - - - -			
Service thereof on C. D. and E. F., 2s. 6d. each	- - - - -	0	5	0
Mileage	- - - - -			
Attending summons when the witnesses were cross-examined	- - - - -	1	1	0
Or attending for appointment before examiner and paying deposit	- - - - -	0	6	8
Notice of appointment, copy and service	-	0	2	6
Subpœna ad test.	- - - - -	0	6	8
Paid	- - - - -	0	5	0
Service thereof in town	- - - - -	0	2	6
(In country cases, paid agent's charges)				
Attending shorthand writer, instructing him to take notes of evidence	- - - - -	0	6	8
Paid his charges	- - - - -			
Attending examiner 4 hours (6s. 8d. per hour)	-	1	6	8
Paid examiner's fees	- - - - -			
Attending to bespeak office copy, examination	-	0	6	8

	£	s.	d.
Paid for same, folios 50 - - -	0	16	8
Notice of adjourned meeting to settle list, copy and service, 1s. 6d. each - -			
Drawing affidavit of service of notice of adjourned meeting to settle list of contributories and copy, 1s. per folio, folios 6 -	0	6	0
Attending deponent to be sworn - -	0	6	8
Paid oath and exhibit 2s. 6d., preparing exhibit 1s. - - - -	0	3	6
Paid filing 2s. 6d., office copy 2s. - -	0	4	6
Attending adjourned appointment to proceed on settling list of contributories (as allowed)	2	2	0
Preparing summons to include A. B. in list, and attending to get same sealed - -	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor 2s. - - - -	0	5	0
Copy and service - - - -	0	4	6
Attending summons, order made (as allowed) -	1	1	0
(If summons is adjourned to be heard by the Judge, see Precedent No. 4.)			
Drawing order and attending for Judge's signature and entering - - - -	0	13	4
Stamp thereon - - - -	0	5	0
Engrossing order - - - -			
Making copy list of contributories as settled, for chief clerk, folios 70 - - -	1	3	4
Copy certificate of chief clerk on settlement of list without schedule, folios 10 - -	0	3	4
Notice of appointment to settle same, 50 copies and services at 1s. 6d. each - - -	3	15	0
(If a summons is issued, charge as for a summons for call, see <i>post.</i>)			
Attending appointment to settle certificate, proceeded and allowed - - - -	2	2	0
Engrossing certificate, including schedule, folios 80, 4d. per folio - - -	1	6	8

COSTS.					313		
					£	s.	d.
Stamp thereon -	-	-	-	-	0	5	0
Attending appointment to sign -	-	-	-	-	0	6	8
Attending to bespeak and for office copy	-	-	-	-	0	6	8
Paid for same	-	-	-	-	1	6	8
(The charge for any supplemental list of contributories and settling same will be similar to the above.)							
Attending the official liquidator, conferring with him as to the amount of call required, and discussing the probable amount to be obtained from assets yet to be realised	-	-	-	-	0	13	4
Preparing summons for call and attending to get same sealed	-	-	-	-	0	6	8
Stamp thereon, 3s.; copy for the Vice Chancellor, 2s.	-	-	-	-	0	5	0
Copies for service at 1s. 6d. each	-	-	-	-			
(Or copy summons for printer, 2s.; attending him therewith, and giving directions for printing, 6s. 8d. Paid his bill.)							
Service of summons on contributories at 1s. 6d. each	-	-	-	-			
Instructions for affidavit in support of call	-	-	-	-	0	6	8
Drawing same and copy, folios 20	-	-	-	-	1	6	8
Attending deponent to be sworn	-	-	-	-	0	6	8
Paid oath and filing	-	-	-	-	0	4	0
Office copy	-	-	-	-	0	6	8
(Advertisement of meeting for call, charge as before; also, affidavit of service.)							
Attending meeting for call when same made (as allowed)	-	-	-	-	2	2	0
Preparing and drawing order for call and attending to enter	-	-	-	-	0	13	4
Stamp thereon	-	-	-	-	0	5	0
Engrossing order for call, 8 folios, 4 l. per folio	-	-	-	-	0	2	8
(Advertisement of call, if directed, charge as before.)							

	£	s.	d.
Copy order for the official liquidator - -	0	2	8
Attending him therewith and settling notice to be served with copy order - - -	0	6	8
Instructions for affidavit of official liquidator of non-payment of call - - -	0	6	8
Drawing same, folios 5 - - -	0	5	0
Copy thereof, with schedule, folios 30 - -	0	10	0
Attending deponent to be sworn - - -	0	6	8
Paid oath and filing - - -	0	4	0
Office copy, folios 30 - - -	0	10	0
(If summons issued against defaulters, charge for same as for last summons.)			
Attending adjourned appointment on call, and summons against defaulters, as allowed by chief clerk - - -	1	1	0
Preparing and drawing order for payment of amount due from A. B., one of the contri- butories, attending for same, and attending to enter - - -	0	13	4
Stamp thereon - - -	0	5	0
Engrossing order, folios 10, 4d. per folio -	0	3	4
Drawing memorandum of order against A. B., and copy for registration at Common Pleas Judgment Office - - -	0	5	0
Attending to register same - - -	0	3	4
Paid registering - - -	0	5	0
(Same charges where orders against any other contributories are registered.)			
Ten copies of order for personal service with memorandum endorsed thereon, folios 10 each (3s. 4d. each) - - -	1	13	4
Drawing memorandum to endorse - - -	0	2	0
Ten copies thereof, 2 folios each, 4d. per folio	0	6	8
Drawing notice directing payment into bank (where directed) for service with the order -	0	2	0
Ten copies thereof, 2 folios each, 4d. per folio	0	6	8

COSTS.		315		
		£	s.	d.
Service of order on A. B., at the West End	-	0	5	0
Service of order in the City (where there is no difficulty)	- - - - -	0	2	6
Attending at Woolwich to serve orders on four of the contributories, and served three of them		1	1	0
Paid expenses	- - - - -			
Attending at East Barnet to serve order on C. D., but could not meet with him	-	0	13	4
Paid expenses	- - - - -			
Attending in the City to serve E. F., but could not meet with him. (These charges are allowed according to circumstances.)	-	0	3	4
Drawing affidavit of service and copy, folios 6		0	6	0
Copy order to annex, folios 10	- -	0	3	4
Attending deponent to be sworn	- -	0	6	8
Paid oath and exhibit	- - - - -	0	2	6
Preparing exhibit	- - - - -	0	1	0
Paid filing, 2s. 6d.; office copy, 3s. 4d.	-	0	5	10
Preparing writ of fieri facias	- - -	0	13	4
Stamp thereon	- - - - -	1	0	0
Attending to lodge and to instruct officer	-	0	6	8
Paid	- - - - -			
Paid officer's fees	- - - - -			
Preparing writ of attachment or sequestration		0	13	4
Paid stamp	- - - - -	0	5	0
Attending entering	- - - - -	0	6	8
Attending to lodge same and instruct officer	-	0	6	8
Paid	- - - - -			
Preparing summons for leave to sue, and attending to get same sealed	- - -	0	6	8
Stamp thereon, 3s.; copy for the Vice Chancellor, 2s.	- - - - -	0	5	0
Copy and service	- . - - -	0	4	6
(Charge for affidavit in support as before.)				
Attending summons, order made but not to be drawn up	- - - - -	0	13	4

	£	s.	d.
Preparing summons for leave for the official liquidator to sell (certain assets) for £ and attending - - - - -	0	6	8
Stamp thereon, 3s.; copy for the Vice Chancellor, 2s. - - - - -	0	5	0
(Charge for affidavit in support.)			
Attending summons order made - - - - -	0	13	4
Drawing up order and completing same - - - - -	0	13	4
Stamp thereon - - - - -	0	5	0
Engrossing order - - - - -			
Summons and order for leave to pay dividend, charge as for last summons and order - - - - -			
Drawing and preparing copy official liquidator's first account, folios 50, 1s. 4d. per folio - - - - -	3	6	8
Preparing summons to proceed thereon, and attending to issue - - - - -	0	6	8
Stamp thereon, 3s.; copy for the Vice Chancellor, 2s. - - - - -	0	5	0
Copy and service (where necessary) - - - - -	0	4	6
Attending summons when account passed allowed - - - - -	2	2	0
Entering account and duplicate in two books, per folio - - - - -	0	1	4
Paid for books - - - - -			
Instructions for affidavit verifying account, and duplicate - - - - -	0	6	8
Drawing same and engrossing, folios 5 - - - - -	0	6	8
Attending official liquidator to be sworn - - - - -	0	6	8
Paid oath and two exhibits - - - - -	0	3	6
Preparing exhibits - - - - -	0	2	0
Paid filing, 2s. 6d.; office copy, 1s. 8d. - - - - -	0	4	2
Copy draft certificate of passing account, 8 folios - - - - -	0	2	8
Attending to settle draft certificate - - - - -	0	13	4
Transcribing certificate - - - - -	0	2	8
Paid stamp - - - - -	0	5	0

COSTS.				317		
				£	s.	d.
Attending appointment to sign engrossment of certificate	-	-	-	0	6	8
Attending to bespeak, and for office copy	-	-	-	0	6	8
Paid for office copy	-	-	-	0	2	8
(See for costs on passing official liquidator's final account, and for vacating recognizance Morgan and Davey's Costs, p. 500. The certificate of the Company being completely wound up will be charged for in the same way as the above certificate, and the order dissolving the Company as the order for leave to sell.)						
Preparing summons for taxation and payment of costs and attending to issue same	-	-	-	0	6	8
Stamp thereon, 3s.; copy for the Vice Chancellor, 2s.	-	-	-	0	5	0
Copy and service	-	-	-	0	4	6
Attending same, order made	-	-	-	0	13	4
Preparing order and attending to enter	-	-	-	0	13	4
Stamp thereon	-	-	-	0	5	0
Engrossing order	-	-	-	-	-	-
Attending to ballot for Taxing Master	-	-	-	0	6	8
Copy order to tax for him, folios 6	-	-	-	0	2	0
Drawing bill of costs and copy, folios 100, at 8d. per folio	-	-	-	3	6	8
Warrant on leaving copy and service	-	-	-	0	5	6
The like to tax	-	-	-	0	5	6
Attending taxing, 6s. 8d. per 25 folios	-	-	-	1	6	8
Engrossing certificate, folios 8	-	-	-	0	2	8
Stamp thereon	-	-	-	1	0	0
Attending to file and bespeak office copy	-	-	-	0	6	8
Paid for same	-	-	-	0	2	8
Paid per centage	-	-	-	-	-	-
Attending official liquidator with office copy certificate and for cheque	-	-	-	0	6	8
Term fee	-	-	-	0	15	0

	£	s.	d.
Letters, &c. (if country case) - - -	0	6	8

Precedent No. 4.

*Costs on application of an alleged Contributory to exclude his Name from the List of Contributories before such List is settled, and of Appeal.**

Term, 18 .

Instructions to apply to Judge to exclude name of A. B. from list of contributories -	0	13	4
Preparing summons to exclude name from list and attending to issue - - -	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor 2s. - - - - -	0	5	0
Copy and service - - - - -	0	4	6
Instructions for affidavit in support - - -	0	6	8
Drawing same and copy, folios 10 - - -	0	13	4
Attending deponent to be sworn - - -	0	6	8
Paid oath and two exhibits - - -	0	3	6
Preparing exhibit 2s., paid filing 2s. 6d. -	0	4	6
Notice of filing copy and service - - -	0	2	6
Drawing notice to admit documents and copy, folios 10 - - - - -	0	13	4
Service thereof - - - - -	0	2	6
Attending official liquidator on his inspecting documents - - - - -	0	6	8
Notice to produce books and papers, folios 6, and copy - - - - -	0	8	0

* The same charges would be applicable where the summons is to take the opinion of the Judge on the chief clerk's certificate as to the list of contributories, or to vary or discharge such certificate.

COSTS.				319
	£	s.	d.	
Service thereof - - - - -	0	2	6	
Paid for copy affidavit in answer, folios 6 -	0	2	0	
Perusing same - - - - -	0	2	0	
(For affidavit in reply charge as for that in support)				
Attending summons, same dismissed -	0	13	4	
(If the summons is adjourned into Court the charge for briefs and attendance in Court will follow as below, but in addition the solicitor is allowed:—				
Drawing briefs 6s. 8d. per sheet as on further consideration of a cause)				
Preparing order thereon and attending to enter	0	13	4	
Engrossing order, folios 8, at 4d. per folio -	0	2	8	
Stamp thereon - - - - -	0	5	0	
Drawing notice of motion by way of appeal, folios 4 - - - - -	0	5	4	
Copy for the registrar - - - - -	0	1	4	
Copy for service - - - - -	0	1	4	
Service thereof - - - - -	0	2	6	
Attending setting down appeal motion -	0	6	8	
Notice thereof, copy and service -	0	2	6	
(If a petition of appeal is presented see Morgan and Davey's Costs for charges)				
Two brief copies affidavits in support of and opposition to application, 10 brief sheets at 3s. 4d. per sheet - - - - -	2	6	8	
(The like of all necessary papers.)				
Two copies notice of motion to annex -	0	4	0	
The like notice to produce - - - - -	0	4	0	
The like order of Court below, 1 brief sheet -	0	6	8	
Drawing observations and 2 copies, 2 brief sheets - - - - -	1	6	8	
Fee to Mr. Q.C., and clerk -	22	0	0	
Attending him - - - - -	1	1	0	
Attending to appoint consultation -	0	6	8	

				£	s.	d.
Fee to him thereon	-	-	-	2	9	6
Attending him	-	-	-	0	6	8
Fee to Mr.	and clerk	-	-	11	0	0
Attending him	-	-	-	0	13	4
Attending to appoint consultation	-	-	-	0	6	8
Fee to him thereon	-	-	-	1	3	6
Attending consultation	-	-	-	0	13	4
Attending Court on appeal motion, engaged all day (see Consolidated Orders), appeal allowed				2	2	0
Attending Registrar with papers	-	-	-	0	6	8
Notice of settling order, copy and service	-	-	-	0	4	6
Attending settling	-	-	-	0	13	4
Paid for order	-	-	-	1	0	0
Notice of passing copy and service	-	-	-	0	4	6
Attending passing	-	-	-	0	13	4
Drawing bill of costs and copy, 8d. per folio, 20 folios	-	-	-	0	13	4
Warrant on leaving copy and service	-	-	-	0	5	6
The like to tax	-	-	-	0	5	6
Attending taxing	-	-	-	0	6	8
Engrossing certificate, folios 8	-	-	-	0	2	8
Stamp thereon	-	-	-	1	0	0
Attending to file and bespeak office copy	-	-	-	0	6	8
Paid for office copy	-	-	-	0	2	8
Paid per centage	-	-	-	-	-	-
Term fee	-	-	-	0	15	0
Letters, &c. (if country case)	-	-	-	0	6	8
Subpoena for costs	-	-	-	1	2	6

(The official liquidator's costs on the above application can easily be prepared from this Form.)

Precedent No. 5.

Costs on Compromise with a Debtor or Contributory.

Term 186 .

Paid for office copy affidavit of C. D. on his application to compromise his liability (as a debtor or) as a contributory, folios 15	£	s.	d.
Perusing same	0	5	0
Attending official liquidator thereon and advising	0	5	0
Attending meeting between the official liquidator and the solicitor for the contributory, arranging terms subject to sanction of Court	0	6	8
Instructions for agreement of compromise with contributory	0	13	4
Drawing same, folios 30 and copy	0	6	8
Attending solicitor of contributory therewith for his approval	2	0	0
Engrossing agreement	0	6	8
Stamp thereon	0	10	0
Attending to get same impressed	0	3	4
Attending obtaining signature of official liquidator	0	6	8
The like of contributory	0	6	8
Preparing summons for leave to carry out agreement and attending to issue	0	6	8
Stamp thereon 3s., copy for Vice Chancellor, 2s.	0	5	0
Copy and service	0	4	6
Instructions for affidavit of official liquidator in support	0	6	8
Drawing same and copy, folios 9	0	12	0
Attending deponent to be sworn	0	6	8
Paid oath and filing 4s., office copy 3s.	0	7	0
Drawing affidavit proving signatures to agreement and copy, folios 4	0	5	4

	£	s.	d.
Attending deponent to be sworn - - - - -	0	6	8
Paid oath and exhibit - - - - -	0	2	6
Preparing exhibit 1s., paid filing 2s. 6d., office copy 1s. 4d. - - - - -	0	4	10
Attending summons, order made - - - - -	0	13	4
Drawing memorandum sanctioning compromise and attending to obtain signature of Judge thereto - - - - -	0	6	8
If it is necessary to cross-examine the debtor or contribu- tory on his affidavit in support of compromise, the charges will be:—			
Preparing summons for cross-examination of contributory on his affidavit and attending -	0	6	8
Stamp thereon 3s., copy for Vice Chancellor 2s.	0	5	0
Copy for service - - - - -	0	2	0
Service on contributory personally - - - - - (or according to circumstances)	0	5	0
Attending summons when cross-examination was taken by the chief clerk (as allowed) -	1	1	0
Attending at the Report Office, bespeaking office copy examination - - - - -	0	6	8
Paid for same, folios - - - - -			

Precedent No. 6.

Costs on Sale under the Order of the Court.

On Sale by Auction.

Instructions for abstract of title - - - - -	0	6	8
Drawing same, 10 brief sheets, 6s. 8d. each -	3	6	8
Fair copy thereof (3s. 4d. each sheet) - - -	1	13	4
Drawing affidavit verifying same, and also particulars of sale, folios 6 - - - - -	0	8	0
Attending to be sworn - - - - -	0	6	8

Paid oath and 2 exhibits 3s. 6d., preparing	£	s	d.
exhibits 2s. - - - - -	0	5	6
Paid filing 2s. 6d., office copy 2s. - - -	0	4	6
Instructions for particulars of sale - - -	0	6	8
Drawing same and fair copy, folios 15 - -	1	0	0
Attending auctioneer, obtaining his approval thereof - - - - -	0	6	8
Preparing summons to proceed on sale and attending to issue - - - - -	0	6	8
Stamp thereon 3s., copy for the Vice Chancellor 2s. - - - - -	0	5	0
Copy and service (where necessary) - - -	0	4	6
Instructions for affidavit in support - - -	0	6	8
Drawing same and fair copy, folios 12 - -	0	16	0
Attending deponent to be sworn - - - - -	0	6	8
Paid oath and filing 4s., office copy 4s. - -	0	8	0
Attending summons when abstract referred to conveyancing counsel - - - - -	0	6	8
Attending with reference to registrar's office balloting for conveyancing counsel - - -	0	6	8
Fee to Mr. (conveyancing counsel) to peruse abstract and advise on title - - -	4	6	6
Attending him - - - - -	0	6	8
Instructions for special conditions of sale - -	0	6	8
Drawing same, folios 12 - - - - -	0	12	0
Fee to Mr. therewith to settle - - - - -	2	4	6
Attending him - - - - -	0	6	8
Perusing opinion on title when it appeared several questions had to be answered - -	0	6	8
(Charge for business done in answering same)			
Notice of appointment to proceed on sale - -	0	2	6
Drawing formal conditions of sale and copy, folios 12 - - - - -	0	16	0
Copy particulars and conditions of sale, for chief clerk, folios 41 - - - - -	0	13	8
Instructions for affidavit of fitness of auctioneer	0	6	8

	£	s.	d.
Drawing same and copy, folios 4 - - - - -	0	5	4
Attending deponent to be sworn - - - - -	0	6	8
Paid oath and filing - - - - -	0	4	0
Office copy - - - - -	0	1	4
Attending appointment to proceed, when a day was fixed for the sale and particulars and conditions were settled - - - - -	1	1	0
Fair copy particulars and conditions of sale for auctioneer as settled, folios 40 - - - - -	0	13	4
Attending the auctioneer and giving final in- structions for the sale - - - - -	0	6	8
(If the auctioneer gives security for deposits, the charge for affidavit of fitness of the sureties and for the recognizance will be the same as on the appointment of an official liquidator. See Precedent No. 13.)			
Attending distributing particulars and condi- tions of sale - - - - -	0	13	4
Attending sale - - - - -	1	1	0
(Charge for completing affidavit of auctioneer of result of sale, office copy, &c.)			
Fair copy certificate of result of sale, folios 14	0	4	8
Attending appointment to settle same - - - - -	0	13	4
Engrossing certificate, folios 14 - - - - -	0	4	8
Stamp thereon - - - - -	0	5	0
Attending to sign - - - - -	0	6	8
Paid for office copy - - - - -	0	4	8
Fair copy, abstract of title for purchaser, 10 sheets - - - - -	1	13	4
Attending to deliver - - - - -	0	6	8
Attending purchaser's solicitor on his examin- ing abstract of title with deeds, engaged 2 hours - - - - -	0	13	4
Perusing requisitions on title and answering same - - - - -	0	6	8
Fair copy requisitions to keep, folios 6 - - - - -	0	2	0

Attending returning same, and writing letter to accompany	£	s.	d.
- - - -	0	6	8
Fair copy conveyance to keep, folios 50	0	16	8
Perusing and approving same on behalf of official liquidator, 4 skins, at 5s. per skin	1	0	0
Attending returning same approved, and writing letter to accompany	0	6	8
Examining engrossment with draft, 4 skins, at 3s. 4d. per skin	0	13	4
Attending summons for payment of purchase money into bank, order made	0	13	4
Attending to settle order	0	13	4
Attending to pass	0	13	4
Attending the official liquidator, informing him thereof, and requesting him to send usual notice to the bank	0	6	8
Attending official liquidator, obtaining his execution of conveyance, and attesting	0	6	8
Attending settling	0	6	8

Precedent No. 7.

On Sale by Private Contract.

Instructions for agreement for sale	0	6	8
Drawing same, folios 20	1	0	0
Copy thereof	0	6	8
Attending proposed purchaser's solicitor there-with for approval and writing letter	0	6	8
Perusing agreement as altered and approving same	0	6	8
Engrossing agreement in two parts, folios 20 each	1	0	0
Paid stamp and paper	-	-	-

	£	s.	d.
Attending to get duty impressed - -	0	3	4
Attending official liquidator obtaining his signature thereto - - -	0	6	8
Attending purchaser's solicitor for agreement signed by his client - - -	0	6	8
Preparing summons for leave to carry same into effect and attending - - -	0	6	8
Stamp thereon - - -	0	3	0
Copy for the Vice Chancellor - - -	0	2	0
Copy and service - - -	0	4	6
Instructions for affidavit in support of application and of sale being beneficial - -	0	6	8
Drawing same and copy, folios 8 - -	0	10	8
Attending deponent to be sworn - -	0	6	8
Paid oath and exhibit - - -	0	2	6
Preparing exhibit - - -	0	1	0
Paid filing - - -	0	2	6
Office copy, folios 8 - - -	0	2	8
Drawing affidavit verifying signatures to agreement and copy, folios 6 - - -	0	8	0
Attending to be sworn - - -	0	6	8
Paid oath and exhibit - - -	0	2	6
Preparing exhibit - - -	0	1	0
Paid filing - - -	0	2	6
Office copy - - -	0	2	0
Attending summons, order made - -	0	13	4
Preparing order, attending for same, and attending to enter 13s. 4d., stamp 5s. -	0	18	4
Engrossing order, folios 7 - - -	0	2	4
Charge for abstract of title, &c., and for completing sale as in last precedent - - -			

STATUTES.

25 & 26 VICT. c. 89.

An Act for the Incorporation, Regulation, and Winding up of Trading Companies and other Associations.

[7th August, 1862.]

WHEREAS it is expedient that the laws relating to the incorporation, regulation, and winding up of trading Companies and other associations should be consolidated and amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited for all purposes as “The Short title. Companies Act, 1862.”

2. This Act, with the exception of such temporary enact- Commence-
ment as is hereinafter declared to come into operation ment of Act.
immediately, shall not come into operation until the 2nd
day of November, 1862, and the time at which it so comes
into operation is hereinafter referred to as the commence-
ment of this Act.

3. For the purposes of this Act a Company that carries Definition of
on the business of insurance in common with any other insurance
business or businesses shall be deemed to be an insurance Company.
Company.

4. No Company, association, or partnership consisting of Prohibition
more than ten persons shall be formed, after the commence- of partner-
ment of this Act, for the purpose of carrying on the busi- ships ex-
ness of banking, unless it is registered as a Company under ceeding
this Act, or is formed in pursuance of some other Act of certain num-
Parliament, or of letters patent; and no Company, associa- ber.

tion, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, association, or partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a Company engaged in working mines within and subject to the jurisdiction of the Stannaries.

Division
of Act.

5. This Act is divided into nine parts, relating to the following subject matters :

The First Part,—to the constitution and incorporation of Companies and Associations under this Act :

The Second Part,—to the distribution of the capital and liability of members of Companies and Associations under this Act :

The Third Part,—to the management and administration of Companies and Associations under this Act :

The Fourth Part,—to the winding up of Companies and Associations under this Act :

The Fifth Part,—to the Registration Office :

The Sixth Part,—to application of this Act to Companies registered under the Joint Stock Companies Acts :

The Seventh Part,—to Companies authorized to register under this Act :

The Eighth Part,—to application of this Act to unregistered Companies :

The Ninth Part,—to repeal of Acts, and temporary provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of
forming
Company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Mode of limiting liability of members.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things; (that is to say,)

Memorandum of association of a Company limited by shares.

- (1). The name of the proposed Company, with the addition of the word "limited" as the last word in such name:
- (2). The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate:
- (3). The objects for which the proposed Company is to be established:
- (4). A declaration that the liability of the members is limited:
- (5). The amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

- (1). That no subscriber shall take less than one share:
- (2). That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up, hereinafter referred to as a Company limited by guarantee, the memorandum of association shall contain the following things; (that is to say,)

Memorandum of association of a Company limited by guarantee.

- (1). The name of the proposed Company, with the addition of the word "limited" as the last word in such name:
- (2). The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate:

(3). The objects for which the proposed Company is to be established :

(4). A declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memoran-
dum of asso-
ciation of an
unlimited
Company.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited Company, the memorandum of association shall contain the following things ; (that is to say,)

(1). The name of the proposed Company :

(2). The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the Company is proposed to be situate :

(3). The objects for which the proposed Company is to be established :

Stamp, sig-
nature, and
effect of
memoran-
dum of asso-
ciation.

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland : It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Power of cer-
tain Com-
panies to
alter memo-
randum of
association.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger

amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

13. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Board of Trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Power of
Companies
to change
name.

Articles of Association.

14. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient: The articles shall be expressed in separate paragraphs, numbered arithmetically: They may adopt all or any of the provisions contained in the table marked A. in the first schedule hereto: They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered: and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: In a Company limited by guarantee or unlimited, and having a capital

Regulations
to be pre-
scribed by
articles of
association.

divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application
of Table A.

15. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A. in the first schedule hereto, the last mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Stamp, sig-
nature, and
effect of ar-
ticles of asso-
ciation.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all monies payable by any member to the Company, in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company, and in England and Ireland to be in the nature of a specialty debt.

General Provisions.

Registration
of memoran-
dum of asso-
ciation and
articles of as-
sociation,
with fees as
in Table B.

17. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock Companies hereinafter mentioned, who shall retain and register the same: There shall be paid to the registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B. in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C. in the first schedule hereto, the several fees therein specified, or such smaller

fees as the Board of Trade may from time to time direct: All fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the Company in the event of the same being wound up as is hereinafter mentioned: A certificate of the incorporation of any Company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Effect of
registration.

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of 1s. or such less sum as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the Company so making default shall for each offence incur a penalty not exceeding 1l.

Copies of
memoran-
dum and
articles to be
given to
members.

20. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the registrar requires; and if any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first mentioned Company may, with the

Prohibition
against
identity of
names in
Companies.

sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Prohibition
against cer-
tain Com-
panies hold-
ing land.

21. No Company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the Company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such Company to hold lands in such quantity and subject to such conditions as they think fit.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of
interest in
Company.

22. The shares or other interest of any member in a Company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate, and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Definition of
"member."

23. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a Company

under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

24. Any transfer of the share or other interest of a deceased member of a Company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. Transfer by personal representative.

25. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:— Register of members.

- (1). The names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: and of the amount paid or agreed to be considered as paid on the shares of each member;
- (2). The date at which the name of any person was entered in the register as a member;
- (3). The date at which any person ceased to be a member;

And any Company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

26. Every Company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the Company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:— Annual list of members.

- (1). The amount of the capital of the Company, and the number of shares into which it is divided:
- (2). The number of shares taken from the commence-

ment of the Company up to the date of the summary :

- (3). The amount of calls made on each share :
- (4). The total amount of calls received :
- (5). The total amount of calls unpaid :
- (6). The total amount of shares forfeited :
- (7). The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock Companies.

Penalty
on Company,
&c., not
keeping a
proper regis-
ter.

27. If any Company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such Company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Company to
give notice
of consolida-
tion or of
conversion of
capital into
stock.

28. Every Company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock Companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

Effect on
conversion
of shares
into stock.

29. Where any Company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of

30. No notice of any trust, expressed, implied, or con-

structive, shall be entered on the register, or be receivable by the registrar, in the case of Companies under this Act and registered in England or Ireland.

trusts on
register.

31. A certificate, under the common seal of the Company, specifying any share or shares or stock held by any member of a Company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Certificate
of shares or
stock.

32. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned: except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the Company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: if such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the Company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects Companies registered in England and Ireland, any Judge sitting in Chambers, or the Vice Warden of the Stannaries, in the case of Companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Inspection
of register.

33. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power to
close regis-
ter.

34. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall

Notice of
increase of
capital and
of members
to be given
to registrar.

be given to the registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: if such notice is not given within the period aforesaid the Company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Remedy for
improper
entry or
omission of
entry in
register.

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any Company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, as respects Companies registered in England or Ireland, by motion in any of Her Majesty's superior Courts of law or equity, or by application to a Judge sitting in Chambers, or to the Vice Warden of the Stannaries in the case of Companies subject to his jurisdiction, and as respects Companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified, and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained: the Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register;

provided that the Court, if a Court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie.

36. Whenever any order has been made rectifying the register, in the case of a Company hereby required to send a list of its members to the registrar, the Court shall, by its order, direct that due notice of such rectification be given to the registrar.

Notice to registrar of rectification of register.

37. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Register to be evidence.

Liability of Members.

38. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

Liability of present and past members of Company.

- (1.) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:
- (3.) No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
- (4.) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
- (5.) In the case of a Company limited by guarantee, no

contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

- (6). Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:
- (7). No sum due to any member of a Company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the Company, payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered
office of
Company.

39. Every Company under this Act shall have a registered office to which all communications and notices may be addressed: If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of
situation of
registered
office.

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him; until such notice is given the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication
of name by
a limited
Company.

41. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily

legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

42. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the Company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the Company.

Penalties on
nonpublica-
tion of name.

43. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this

Register of
mortgages.

section shall be open to inspection by any creditor or member of the Company at all reasonable times; and if such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty as respects Companies registered in England and Ireland, any Judge sitting in Chambers, or the Vice Warden of the Stannaries in the case of Companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Certain
Companies
to publish
statement
entered in
Schedule.

44. Every limited banking Company and every insurance Company, and deposit, provident, or benefit society under this Act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D. in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company, and in every branch office or place where the business of the Company is carried on, and if default is made in compliance with the provisions of this section the Company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above mentioned statement on payment of a sum not exceeding sixpence.

List of direc-
tors to be
sent to regis-
trar.

45. Every Company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint Stock Companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

Penalty on
Company
not keeping
register of
directors.

46. If any Company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of

such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed on behalf of any Company under this Act, if made, accepted, or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, accepted, or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Promissory notes and bills of exchange.

48. If any Company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the Company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Prohibition against carrying on business with less than seven members.

Provisions for Protection of Members.

49. A general meeting of every Company under this Act shall be held once at the least in every year.

General meeting of Company.

50. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any Company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association or in the table marked A. in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the Company; and any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall

Power to alter regulations by special resolution.

be subject in like manner to be altered or modified by any subsequent special resolution.

Definition
of special
resolution.

51. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy (in cases where by the regulations of the Company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed: At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company: In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision
where no
regulations
as to meet-
ings.

52. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days notice in writing has been served on every member in manner in which notices are required to be served by the table marked A. in the first schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registry of

53. A copy of any special resolution that is passed by any

Company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him : If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding 2*l.* for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

special resolutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution : Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of 1*s.*, or such less sum as the Company may direct : And if any Company makes default in complying with the provisions of this section it shall incur a penalty not exceeding 1*l.* for each copy in respect of which such default is made ; and every director and manager of the Company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copies of special resolutions.

55. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom ; and every deed signed by such attorney, on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

Execution of deeds abroad.

56. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon, in such manner as the Board may direct, upon the applications following ; that is to say :—

Examination of affairs of Company by inspectors.

- (1). In the case of a banking Company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the Company for the time being issued.
- (2). In the case of any other Company that has a capital divided into shares, upon the application of members

holding not less than one-fifth part of the whole shares of the Company for the time being issued.

- (3). In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application
for inspection
to be sup-
ported by
evidence.

57. The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection
of books.

58. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the Company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding 5*l.* in respect of each offence.

Result of
examination
how dealt
with.

59. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade; such report shall be written or printed as the Board of Trade directs. A copy shall be forwarded by the Board of Trade to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the Company, which it is hereby authorized to do.

Power of
Company
to appoint
inspectors.

60. Any Company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the Company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this ex-

ception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the Company in general meeting directs; and the officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Board of Trade.

61. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Report of inspectors to be evidence.

Notices.

62. Any summons, notice, order, or other document required to be served upon the Company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the Company, at their registered office.

Service of notices on Company.

63. Any document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the Post Office

Rules as to notices by letter.

64. Any summons, notice, order, or proceeding requiring authentication by the Company may be signed by any director, secretary, or other authorized officer of the Company, and need not be under the common seal of the Company, and the same may be in writing or in print, or partly in writing and partly in print.

Authentication of notices of Company.

Legal Proceedings.

65. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within

Recovery of penalties.

England and Wales with respect to Summary Convictions and Orders," or any Act amending the same; and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the Act passed in the Session of Parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to amend and consolidate the Acts relating to Merchant Shipping," or any Act amending the same, as regards offences in Scotland against that Act, not being offences by that Act described as felonies or misdemeanors; and as to Ireland, in manner directed by the Act passed in the Session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any Act amending the same.

Application
of penalties.

66. The justices or sheriff imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of Her Majesty's exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Evidence of
proceedings
at meetings.

67. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by

such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

68. In the case of Companies under this Act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated Companies, but only so far as such jurisdiction or powers are consistent with the provisions of this Act and with the constitution of Companies as prescribed or required by this Act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the said Court, in causes or matters whereof the Court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants, and summonses required or authorized by the practice of the Court to be served on any Company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the Vice Warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the Crown, on such terms and conditions as the Court shall think fit: and all decrees, orders, and judgments of the said Court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the Court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said Court, and the signature of the registrar thereof, shall be judicially noticed by all other Courts and Judges in England, and shall require no other proof than the production thereof: the registrar of the said Court, or the assistant registrar, in making sales under any decree or order of the Court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that behalf.

Jurisdiction
of Vice War-
den of Stan-
naries.

69. Where a limited Company is plaintiff or pursuer in any action, suit, or other legal proceeding, any Judge

Provision as
to costs in

actions
brought by
certain
limited Com-
panies.

having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the Company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Declaration
in action
against
members.

70. In any action or suit brought by the Company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other monies due whereby an action or suit hath accrued to the Company.

Alteration of Forms.

Board of
Trade may
alter forms
in Schedule.

71. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last mentioned forms, as it deems requisite: any such table or form, when altered, shall be published in the *London Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this Act, but no alteration made by the Board of Trade in the table marked A. contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

Arbitrations.

Power for
Companies to
refer matters
to arbitra-
tion.

72. Any Company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future difference, question, or other matter whatsoever in dispute between itself and any other Company or person, and the Companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to

settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

73. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between Companies and persons in pursuance of this Act; and in the construction of such provisions "the Companies" shall be deemed to include Companies authorized by this Act to refer disputes to arbitration. Provisions of 22 & 23 Vct. c. 59, to apply.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

- 74. Meaning of contributory (see pp. 48, 83).
- 75. Nature of liability of contributory (see pp. 83, 105).
- 76. Contributories in case of death (see p. 83).
- 77. Contributories in case of bankruptcy (see p. 83).
- 78. Contributories in case of marriage (see p. 84).

Winding Up by the Court.

- 79. Circumstances under which a Company may be wound up by the Court (see p. 9).
- 80. Company when deemed unable to pay its debts (see p. 9).
- 81. Definition of the "Court" (see p. 1).
- 82. Application for winding up to be by petition (see pp. 17, 20).
- 83. Power of Court (see p. 8).
- 84. Commencement of winding up by Court (see p. 37).
- 85. Court may grant injunction (see pp. 29, 57).
- 86. Course to be pursued by Court on hearing petition (see pp. 12, 27, 175).
- 87. Actions and suits to be stayed after order to wind up (see p. 30).
- 88. Copy order to be forwarded to registrar (see p. 37).
- 89. Power of Court to stay proceedings (see p. 182).
- 90. Effect of order on share capital limited by guarantee (see p. 106).

91. Court may have regard to wishes of creditors or contributories (see pp. 12, 38).

Official Liquidators.

92. Appointment of official liquidators (see p. 59).

93. Resignations, removals, filling up vacancies, and compensation (see p. 59).

94. Style and duties of official liquidators (see p. 59).

95. Powers of official liquidator (see pp. 60, 116).

96. Discretion of official liquidator (see p. 61).

97. Appointment of solicitor to official liquidator (see p. 61).

Ordinary Powers of Court.

98. Collection and application of assets (see p. 81).

99. Provision as to representative contributories (see p. 81).

100. Power of Court to require delivery of property (see p. 157).

101. Power of Court to order payment of debts by contributories (see p. 149).

102. Power of Court to make calls (see p. 105).

103. Power of Court to order payment into bank (see pp. 61, 106).

104. Regulation of account with Court (see p. 61).

105. Provision in case of representative not paying money ordered (see p. 106).

106. Order conclusive evidence (see p. 106).

107. Court may exclude creditors not proving within a certain time (see p. 117).

108. Proceedings in Court of the Vice Warden of Stannaries on proof of debts (see p. 211).

109. Court to adjust rights of contributories (see p. 180).

110. Court to order costs (see p. 175).

111. Dissolution of Company (see pp. 61, 183).

112. Registrar to make minute of ditto (see pp. 61, 183).

113. Penalty on not reporting ditto (see p. 183).

114. Petition to be a *lis pendens* (see p. 32).

Extraordinary Powers of Court.

115. Power of Court to summon persons before it suspected of having property of Company (see pp. 133, 157).

116. Special provisions as to Court of Vice Warden of Stannaries (see p. 212).

- 117. Examination of parties by Court (see pp. 133, 157).
- 118. Power to arrest contributory about to abscond, &c. (see p. 157).
- 119. Powers of Court cumulative (see p. 158).

Enforcement of and Appeal from Orders.

- 120. Power to enforce orders (see p. 165).
- 121. Where an order, interlocutor or decree has been made in Scotland for winding up a Company by the Court, it shall be competent to the Court in Scotland during session and to the Lord Ordinary on the Bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of 5l. per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the Court or Lord Ordinary.
- 122. Orders made in England to be enforced in Ireland and Scotland (see p. 169).
- 123. Mode of dealing with orders to be enforced by other Courts (see p. 169).
- 124. Appeals from orders (see p. 127).
- 125. Judicial notice to be taken of signatures of officers (see p. 133).
- 126. Special commissioners for receiving evidence (see p. 134).
- 127. Court may order the examination of persons in Scotland (see p. 134).
- 128. Affidavits &c. may be sworn in Ireland, Scotland and the colonies (see p. 135).

Voluntary Winding Up of Company.

- 129. Circumstances under which Company may be wound up voluntarily (see p. 185).

130. Commencement of voluntary winding up (see p. 186).

131. Effect of voluntary winding up on status of Company (see p. 186).

132. Notice of resolution to wind up voluntarily (see p. 187).

133. Consequence of voluntary winding up (see p. 187).

134. Effect of voluntary winding up on share capital of Company limited by guarantee (see p. 188).

135. Power of Company to delegate authority to appoint liquidators (see p. 188).

136. Arrangement when binding on creditors (see p. 188).

137. Power of creditor or contributory to appeal (see p. 189).

138. Power of liquidator or contributory in voluntary winding up to apply to Court (see p. 189).

139. Power of liquidator to call general meeting (see p. 189).

140. Power to fill up vacancy in liquidators (see p. 189).

141. Power of Court to appoint liquidators (see p. 190).

142. Liquidators at conclusion of winding up to make up an account (see p. 190).

143. Liquidator to report meeting to registrar (see p. 190).

144. Costs of voluntary winding up (see p. 190).

145. Saving rights of creditors (see pp. 19, 190).

146. Power of Court to adopt proceedings on voluntary winding up (see pp. 27, 190).

Winding Up subject to Supervision of Court.

147. Power of Court on application to direct winding up subject to supervision (see p. 205).

148. Petition to wind up subject to supervision (see p. 205).

149. Court may have regard to wishes of creditors (see p. 205).

150. Power of Court to appoint additional liquidators (see p. 206).

151. Effect of order of Court for winding up (see p. 206).

152. Appointment in certain cases of voluntary liquidators to office of official liquidator (see pp. 59, 206).

Supplemental Provisions.

153. Dispositions after commencement of winding up avoided (see p. 33).

- 154. Books of Company to be evidence (see p. 133).
- 155. As to disposal of books, &c. (see p. 184).
- 156. Inspection of books (see pp. 55, 136).
- 157. Power of assignee to sue (see p. 160).
- 158. Debts of all descriptions to be proved (see p. 117).
- 159. General scheme of liquidation may be sanctioned (see p. 161).
- 160. Power to compromise (see p. 161).
- 161. Power for official liquidators to accept shares &c. on a sale (see p. 201).
- 162. Mode of determining price (see p. 202).
- 163. Certain attachments, sequestrations and executions, to be void (see p. 33).
- 164. Fraudulent preference (see p. 33).
- 165. Power of Court to assess damages against delinquent officers (see p. 213).
- 166. Penalty on falsification of books (see p. 213).
- 167. Prosecution of delinquent directors on winding up by Court (see p. 214).
- 168. Prosecution on voluntary winding up (see p. 214).
- 169. Penalty of perjury (see p. 136).

Power of Courts to make Rules.

170. In England the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice Chancellors for the time being, or with the advice and consent of any two of the Vice Chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a Company in the Court of Chancery as may from time to time seem necessary, but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a Company.

171. In Scotland the Court of Session may make such rules concerning the mode of winding up as may be necessary by Act of Sederunt; but, until such rules are made, the general practice of the Court of Session in suits pending in such Court shall, so far as the same is applicable, and not inconsistent with this Act, apply to all proceedings for winding up a Company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

Power of
Court of Ses-
sion in Scot-
land to make
rules.

Power to
make rules
in Stan-
naries Court.

172. The Vice Warden of the Stannaries may from time to time, with the consent provided for by sect. 23 of the Act of 18 Vict. c. 32, make rules for carrying into effect the powers conferred by this Act upon the Court of the Vice Warden, but, subject to such rules, the general practice of the said Court and of the registrar's office in the said Court, including the present practice of the said Court in winding up Companies, may be applied to all proceedings under this Act; the said Vice Warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said Court in proceedings under this Act; and any rules so made shall be of the same force as if they had been enacted in the body of this Act; and the fees paid in respect of proceeding taken under this Act, including fees taken under "The Joint Stock Companies Act, 1856," in the matter of winding up Companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the Court, as the Lord Warden of the Stannaries shall from time to time, on the application of the Vice Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the Court arising from other business, to await such direction and order of the Lord Warden herein, and to accumulate by investment in Government securities until the whole shall have been so appropriated.

Power of
Lord Chan-
cellor of
Ireland to
make rules.

173. In Ireland the Lord Chancellor of Ireland may, as respects the winding up of Companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this Act hereinbefore given to the Lord Chancellor of Great Britain; but until such rules are made the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a Company.

PART V.

REGISTRATION OFFICE.

Constitution
of registra-
tion office.

174. The registration of Companies under this Act shall be conducted as follows (that is to say):—

- (1). The Board of Trade may from time to time appoint such registrars, assistant registrars, clerks, and servants as they may think necessary for the registration of Companies under this Act, and remove them at pleasure.
- (2). The Board of Trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid :
- (3). The Board of Trade may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no Company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the Company is declared to be established ; and the Board may require that the registrar's office of the Court of the Vice Warden of the Stannaries shall be one of the offices for the registration of Companies formed for working mines within the jurisdiction of the Court :
- (4). The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies :
- (5). Every person may inspect the documents kept by the registrar of joint stock Companies ; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding 1s. for each inspection ; and any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document, or any part of any other document, to be certified by the registrar ; and there shall be paid for such certificate of incorporation, certified copy, or extract, such fees as the Board of Trade may appoint, not exceeding 5s. for the certificate of incorporation, and not exceeding 6d. for each folio of such copy or extract, or in Scotland for each sheet of 200 words :
- (6). The existing registrar, assistant registrars, clerks, and other officers and servants in the office for the registration of joint stock Companies shall, during

the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade :

- (7). There shall be paid to any registrar, assistant registrar, clerk, or servant that may hereafter be employed in the registration of joint stock Companies such salary as the Board of Trade may, with the sanction of the Commissioners of the Treasury, direct :
- (8). Whenever any Act is herein directed to be done to or by the registrar of joint stock Companies, such Act shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock Companies, or in his absence to or by such person as the Board of Trade may for the time being authorize ; in Scotland to or by the existing registrar of joint stock Companies in Scotland ; and in Ireland to or by the existing assistant registrar of joint stock Companies for Ireland, or by such person as the Board of Trade may for the time being authorize in Scotland or Ireland in the absence of the registrar ; but in the event of the Board of Trade altering the constitution of the existing registry office, such Act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the Companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. Definition of Joint Stock Companies Acts (see p. 3).

176. Application of Act to Companies formed under Joint Stock Companies Acts (see pp. 3, 84).

177. Application of Act to Companies registered under Joint Stock Companies Acts (see pp. 3, 85).

178. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct. Mode of transferring shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

179. The following regulations shall be observed with respect to the registration of Companies under this part of this Act ; (that is to say,) Regulations as to registration of existing Companies.

- (1). No Company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock Company as hereinafter defined, shall register under this Act in pursuance of this part thereof:
- (2). No Company having the liability of its members limited by Act of Parliament or by letters patent, shall register under this Act in pursuance of this part thereof as an unlimited Company, or as a Company limited by guarantee:
- (3). No Company that is not a joint stock Company as hereinafter defined shall in pursuance of this part of this Act register under this Act as a Company limited by shares:
- (4). No Company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:
- (5). Where a Company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited Company the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last mentioned general meeting:
- (6). Where a Company is about to register as a Company limited by guarantee the assent to its being so

registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount :

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Companies
capable of
being regis-
tered.

180. With the above exceptions, and subject to the foregoing regulations, every Company existing at the time of the commencement of this Act, including any Company registered under the said Joint Stock Companies Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a Company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee ; and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Definition of
joint stock
Company.

181. For the purposes of this part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint Stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons ; and such Company when registered with limited liability under this Act shall be deemed to be a Company limited by shares.

Proviso as

182. No banking Company claiming to issue notes in the

United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited Company.

183. Previously to the registration in pursuance of this part of this Act of any joint stock Company there shall be delivered to the registrar the following documents; (that is to say,) Requisitions for registration by Companies.

- (1). A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:
- (2). A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the Company:
- (3). If any such joint stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars: (that is to say,)

The nominal capital of the Company and the number of shares into which it is divided:

The number of shares taken and the amount paid on each share

The name of the Company, with the addition of the word "limited" as the last word thereof:

With the addition, in the case of the Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

184. Previously to the registration in pursuance of this part of this Act of any Company not being a joint stock Company there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or Requisitions for registration by existing Company not being a joint stock Company.

other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of guarantee.

Power for
existing
Company
to register
amount of
stock instead
of shares.

185. Where a joint stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentica-
tion of state-
ments of
existing
Companies.

186. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made in pursuance of the Act passed in the sixth year of the reign of His late Majesty King *William the Fourth*, Chapter 62.

Registrar
may require
evidence
as to nature
of Company.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a joint stock Company as hereinbefore defined.

On registra-
tion of bank-
ing Com-
pany with
limited lia-
bility notice
to be given
to customers.

188. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the Company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company; and in case the Company omits to give any such notice as is hereinbefore required to be given, then as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

189. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any Company in cases where such Company is not registered as a limited Company, or where previously to its being registered as a limited Company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Exemption of certain Companies from payment of fees.

190. Any Company authorized by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

Power to Company to change name.

191. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B. and C. in the first schedule hereto, the registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking Company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established by or under Act of Parliament.

Certificate of registration of existing Companies.

192. A certificate of incorporation given at any time to any Company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Certificate to be evidence of compliance with Act.

193. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the Company at the date of its registration under this Act, shall on registration pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Transfer of property to Company.

194. The registration in pursuance of this part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any

Registration under this Act not to affect obligations incurred pre-

viously to
registration.

Continuation
of existing
actions and
suits.

contract entered into, by, to, with, or on behalf of such Company previously to such registration.

195. All such actions, suits, and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this part of this Act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such Company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the Company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the Company.

196. Effect of registration under Act (see pp. 4, 85).

197. Power of Court to restrain further proceedings (see p. 30).

198. Order for winding up Company (see p. 30).

199. Winding-up of unregistered Companies (see p. 6).

Clause 2 (see p. 191).

Clause 3 (see p. 13).

Clause 4 (see p. 13).

200. Who to be deemed a contributory in the event of Company being wound up (see p. 86).

201. Power of Court to restrain further proceedings (see p. 30).

202. Effect of order for winding up Company (see p. 31).

203. Provision in case of unregistered Company (see p. 148).

Provisions in
this part of
Act cumulative.

204. The provisions made by this part of the Act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up Companies by the Court, and the Court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this part of this Act.

PART IX.

REPEAL OF ACTS AND TEMPORARY PROVISIONS.

205. After the commencement of this Act there shall be repealed the several Acts specified in the first part of the third Schedule hereto, with this qualification, that so much of the said Acts as is set forth in the second part of the said third Schedule shall be hereby re-enacted and continue in force as if unrepealed. Repeal of Acts.

206. No repeal hereby enacted shall affect,

- (1). Anything duly done under any Acts hereby repealed : Saving clause as to repeal.
- (2). The incorporation of any Company registered under any Act hereby repealed.
- (3). Any right or privilege acquired or liability incurred under any Act hereby repealed :
- (4). Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed :
- (5). Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

207. Where previously to the commencement of this Act an order has been made for winding up a Company under any Acts or Act hereby repealed, or a resolution has been passed for winding up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed, and for the purposes of such winding up, such repealed Acts or Act shall be deemed to remain in full force. Saving of existing proceedings for winding up.

208. Where previously to the commencement of this Act any conveyance, mortgage, or other deed has been made in pursuance of any Act hereby repealed, such deed shall be of the same force as if this Act had not passed, and for the purposes of such deed such repealed Act shall be deemed to remain in full force. Saving of conveyance deeds.

209. Every insurance Company completely registered under the Act passed in the 8th year of the reign of Her present Majesty, cap. 110, intituled "An Act for the registration, Incorporation, and Regulation of Joint Stock Companies," shall on or before the 2nd day of November, 1862, and every other Company required by any Act hereby re- Compulsory registration of certain Companies.

pealed to register under the said Joint Stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a Company under this Act, in manner and subject to the regulations hereinbefore contained, with this exception, that no Company completely registered under the said Act of the eighth year of the reign of Her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance Companies as are mentioned in this section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such Companies shall not have any effect until the time of the commencement of this Act. No fees shall be charged in respect of the registration of any Company required to register by this section.

Penalty on
Company not
registering.
21 Vict. c. 14.
s. 28.

210. If any Company required by the last section to register under this Act makes default in complying with the provisions thereof, then, from and after the day upon which such Company is required to register under this Act, until the day on which such Company is registered under this Act, (which it is empowered to do at any time,) the following consequences shall ensue; (that is to say,)

- (1). The Company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity :
- (2). No dividend shall be payable to any shareholder in such Company :
- (3). Each director or manager of the Company shall for each day during which the Company so being in default carries on business incur a penalty not exceeding 5*l.*, and such penalty may be recovered by any person, whether a shareholder or not in the Company, and be applied by him to his own use :

Nevertheless, such default shall not render the Company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section ; and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any Company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or one of them.

211. Upon the application of the directors of any Company registered under the Joint Stock Companies Acts as hereinbefore defined, or any of them, made within one year after the date of the commencement of this Act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the Board of Trade shall have authority by their certificate in writing to change the registered office of any such Company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint stock Companies with whom the memorandum of registration of such Company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is pursuant to such certificate to take place, and shall attach the certificate to the memorandum; and the said registrar shall thereupon transmit to the registrar of joint stock Companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original memorandum of registration, and thereupon the place of the registered office shall, from the said last mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: Provided, however, that such change shall in nowise alter or affect anything theretofore done by the said Company, or any of their rights or liabilities in respect thereof.

Temporary power for Companies to change registered office.

212. The Board of Trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the Company to apply to the Board of Trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of four successive weeks in the newspaper following; that is to say, in some newspaper circulating in the district where the registered office of the Company is situate, and also if the Company is registered in England in

Restrictions on issue of certificate.

the *London Gazette*, if in Ireland in the *Dublin Gazette*, if in Scotland in the *Edinburgh Gazette*, nor until the said Board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

- (1). If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
- (2). Every member shall, on payment of 1s., or such less sum as the Company in general meeting may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.
- (3). If such certificate is worn out or lost, it may be renewed, on payment of 1s., or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

- (4). The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that 21 days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.
- (5). A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.
- (6). If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be

liable to pay interest for the same at the rate of 5l. per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

- (7). The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

- (8). The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

- (9). Shares in the Company shall be transferred in the following form:—

I *A.B.* of in consideration of the sum of pounds paid to me by *C.D.* of do hereby transfer to the said *C.D.* the share [*or shares*] numbered standing in my name in the books of the Company, to hold unto the said *C.D.*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said *C.D.* do hereby agree to take the said share [*or shares*] subject to the same conditions. As witness our hands, the day of

- (10). The Company may decline to register any transfer of shares made by a member who is indebted to them.

- (11). The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

- (12). The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

- (13). Any person becoming entitled to a share in con-

sequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the Company.

- (14). Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.
- (15). The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.
- (16). The instrument of transfer shall be presented to the Company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

- (17). If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.
- (18). The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.
- (19). If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due

in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

- (20). Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.
- (21). Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.
- (22). A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

- (23). The directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock.
- (24). When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.
- (25). The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof

respectively the same privileges and advantages for the purpose of voting at meetings of the Company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

- (26). The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.
- (27). Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.
- (28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

- (29). The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.
- (30). Subsequent general meetings shall be held at such

time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

- (31). The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (32). The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.
- (33). Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.
- (34). Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

- (35). Seven days notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
- (36). All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration, of the accounts, balance-sheets, and the ordinary report of the directors.
- (37). No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the Company at the time of

the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

- (38). If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned sine die.
- (39). The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.
- (40). If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.
- (41). The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (42). At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (43). If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

- (44). Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred,

and an additional vote for every ten shares beyond the first hundred shares.

- (45). If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.
- (46). If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.
- (47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.
- (48). Votes may be given either personally or by proxy.
- (49). The instrument appointing a proxy shall be in writing under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: No person shall be appointed a proxy who is not a member of the Company.
- (50). The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.
- (51). Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the County of being a member
of the Company Limited, and entitled to
Vote *or* Votes, hereby appoint of as
my proxy, to vote for me and on my behalf at the
[ordinary *or* extraordinary *as the case may be*] general
meeting of the Company to be held on the day of
, and at any adjournment thereof [*or*, at any
meeting of the Company that may be held in the
year].

As witness my hand, this day of .
Signed by the said in the presence of .

Directors.

- (52). The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (53). Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.
- (54). The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

- (55). The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior Act of the directors which would have been valid if such regulation had not been made.
- (56). The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

- (57). The office of director shall be vacated,—
If he holds any other office or place of profit under the Company;
If he becomes bankrupt or insolvent;
If he is concerned in or participates in the profits of any contract with the Company.
But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any Company which

has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

- (58). At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office.
- (59). The one third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot: In every subsequent year the one third or other nearest number who have been longest in office shall retire.
- (60). A retiring director shall be re-eligible.
- (61). The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.
- (62). If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.
- (63). The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.
- (64). Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

- (65.) The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

- (66). The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: Questions arising at any meeting shall be decided by a majority of votes: In case of an equality of votes the chairman shall have a second or casting vote: A director may at any time summon a meeting of the directors.
- (67). The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.
- (68). The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.
- (69). A committee may elect a chairman of their meetings: If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.
- (70). A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present: and in case of an equality of votes the chairman shall have a second or casting vote.
- (71). All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards

discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

- (72). The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.
- (73). No dividend shall be payable except out of the profits arising from the business of the Company.
- (74). The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.
- (75). The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.
- (76). Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.
- (77). No dividend shall bear interest as against the Company.

Accounts.

- (78). The directors shall cause true accounts to be kept,—
 - Of the stock in trade of the Company;
 - Of the sums of money received and expended by the Company, and the matter in respect of which such receipt and expenditure takes place; and
 - Of the credits and liabilities of the Company;The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general

meeting, shall be open to the inspection of the members during the hours of business.

- (79). Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.
- (80). The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters : every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting : and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.
- (81). A balance sheet shall be made out in every year, and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.
- (82). A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

- (83). Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.
- (84). The first auditors shall be appointed by the directors : subsequent auditors shall be appointed by the Company in general meeting.
- (85). If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.
- (86). The auditors may be members of the Company ; but

- no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.
- (87). The election of auditors shall be made by the Company at their ordinary meeting in each year.
- (88). The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.
- (89). Any auditor shall be re-eligible on his quitting office.
- (90). If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.
- (91). If no election of auditors is made in manner aforesaid the Board of Trade may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.
- (92). Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.
- (93). Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company: He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.
- (94). The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

- (95). A notice may be served by the Company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (96). All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.
- (97). Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.
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CAPITAL AND LIABILITIES.			PROPERTY AND ASSETS.		
I. CAPITAL.	Showing:	£ s. d.	III. PROPERTY held by the Company.	Showing:	£ s. d.
1	The number of shares	-		Immovable property, distinguishing—	
2	The amount paid per share	-		(a) Freehold land	
3	If any arrears of calls, the nature of the arrear, and the names of the defaulters	-		(b) " buildings	
4	The particulars of any forfeited shares. Showing:	-		(c) Leasehold	
5	The amount of loans on mortgages or debenture bonds.	-	8	Movable property, distinguishing—	
6	The amount of debts owing by the Company, distinguishing—	-		(d) Stock in trade	
	(a) Debts for which acceptances have been given.	-		(e) Plant.	
	(b) Debts to tradesmen for supplies of stock in trade or other articles.	-		The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss	
	(c) Debts for law expenses.	-	9	Debts considered good for which the Company hold bills or other securities.	
	(d) Debts for interest on debentures or other loans.	-	10	Debts considered good for which the Company hold no security.	
	(e) Unclaimed dividends.	-	11	Debts considered doubtful and bad	
	(f) Debts not enumerated above. Showing:	-		Any debt due from a director or other officer of the Company to be separately stated. Showing:	
VI. RESERVE FUND.	The amount set aside from profits to meet contingencies.	-		12 The nature of investment and rate of interest.	
VII. PROFIT AND LOSS.	The disposable balance for payment of dividend, &c.	-		13 The amount of cash, where lodged, and if bearing interest.	
CONTINGENT LIABILITIES.	Claims against the Company not acknowledged as debts. Monies for which the Company is contingently liable.	-	V. CASH AND INVESTMENTS.		

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of **JOINT STOCK COMPANIES** by a Company having a capital divided into shares.

	£	s.	d.
For registration of a Company whose nominal capital does not exceed 2,000 <i>l.</i> , a fee of	2	0	0
For registration of a Company whose nominal capital exceeds 2,000 <i>l.</i> , the above fee of 2 <i>l.</i> , with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)			
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 2,000 <i>l.</i> , up to 5,000 <i>l.</i>	1	0	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 5,000 <i>l.</i> , up to 100,000 <i>l.</i>	0	5	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 100,000 <i>l.</i>	0	1	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 1,000 <i>l.</i> , or part of a 1,000 <i>l.</i> , as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50 <i>l.</i> , taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	0	5	0

For making a record of any fact hereby authorized or required to be recorded by the registrar of Companies, a fee of	£	s.	d.
	0	5	0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a Company not having a capital divided into shares.

	£	s.	d.
For registration of a Company whose number of members as stated in the articles of association does not exceed 20	2	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	5	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5 <i>l.</i> , with an additional 5 <i>s.</i> for every 50 members or less number than 50 members after the first 100.			
For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the Company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one Company shall be liable to pay on the whole a greater fee than 20 <i>l.</i> in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	0	5	0

For making a record of any fact hereby authorized or required to be recorded by the registrar of Companies, a fee of	£	s.	d.
	0	5	0

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

* The capital of the Company is _____, divided into
shares of _____ each.

The number of shares issued is _____

Calls to the amount of _____ pounds per share have
been made, under which the sum of _____ pounds
has been received.

The liabilities of the Company on the 1st day of January
(or July) were,—

Debts owing to sundry persons by the Company :

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the Company on that day were,—

Government securities [*stating them*], £

Bills of exchange and promissory notes,

Cash at the bankers, £

Other securities, £

* If the Company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE.

FORM A.

MEMORANDUM of Association of a Company limited by Shares.

1st. The name of the Company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are, "the conveyance of passengers and goods in ships or boats between such places as the Company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the Company is 200,000*l.*, divided into 1000 shares of 200*l.* each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.				No. of Shares taken by each Sub- scriber.
" 1.	John Jones of	in the county of	Merchant.	200
" 2.	John Smith of	in the county of	.	25
" 3.	Thomas Green of	in the county of	.	30
" 4.	John Thompson of	in the county of	.	40
" 5.	Caleb White of	in the county of	.	15
" 6.	Andrew Brown of	in the county of	.	5
" 7.	Cæsar White of	in the county of	.	10
Total shares taken				325

Dated the 22nd day of November, 1861.
Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a Com-
pany limited by guarantee, and not having a capital divided
into shares.

Memorandum of Association.

1st. The name of the Company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the Company will be situate in England.

3rd. The objects for which the Company is established are, "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding 10*l*.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones, of _____ in the county of _____ Mer-
chant.

"2. John Smith, of _____ in the county of _____

"3. Thomas Green, of _____ in the county of _____

"4. John Thompson, of _____ in the county of _____

"5. Caleb White, of _____ in the county of _____

"6. Andrew Brown, of _____ in the county of _____

"7. Cæsar White, of _____ in the county of _____

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES of ASSOCIATION ~~to~~ accompany preceding MEMO-
RANDUM of ASSOCIATION.

(1). The Company, for the purpose of registration, is declared to consist of 500 members.

(2). The directors hereinafter mentioned may, whenever

the business of the association requires it, register an increase of members.

Definition of Members.

- (3). Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

- (4). The first general meeting shall be held at such time not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.
- (5). Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
- (6). The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (7). The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.
- (8). Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.
- (9). Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

- (10). Seven days notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

- (11). All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.
- (12). No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.
- (13). If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.
- (14). The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.
- (15). If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.
- (16). The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (17). At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- (18) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

- (19). Every member shall have one vote and no more.
 (20). If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.
 (21). No member shall be entitled to vote at any meeting unless all monies due from him to the Company have been paid.
 (22). Votes may be given either personally or by proxies: A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.
 (23). No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.
 (24). Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the Company Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or at any meeting of the Company that may be held in the year*].

As witness my hand, this day of .

Signed by the said in the presence of

Directors.

- (25). The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
 (26). Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

- (27). The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting ; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

- (28). The directors shall be elected annually by the Company in general meeting.

Business of Company.

[*Here insert Rules as to mode in which business of Insurance is to be conducted.*]

Accounts.

- (29). The accounts of the Company shall be audited by a committee of five members, to be called the audit committee.
- (30). The first audit committee shall be nominated by the directors out of the body of members.
- (31). Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.
- (32). The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.
- (33). The audit committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company: they may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the Company.
- (34). The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the

balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the Company, and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

- (35). A notice may be served by the Company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (36). Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding up.

- (37). The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the Company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

- | | | |
|-----------------------|------------------|------|
| " 1. John Jones of | in the county of | Mer- |
| chant. | | |
| " 2. John Smith of | in the county of | |
| " 3. Thomas Green of | in the county of | |
| " 4. John Thompson of | in the county of | |
| " 5. Caleb White of | in the county of | |
| " 6. Andrew Brown of | in the county of | |
| " 7. Cæsar White of | in the county of | |
- Dated the 22d day of November 1861.

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by guarantee, and having a capital divided into shares.

Memorandum of Association.

1st. The name of the Company is "The Highland Hotel Company, Limited."

2d. The registered office of the Company will be situate in Scotland.

3d. The objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

- | | | |
|-----------------------|------------------|------|
| " 1. John Jones of | in the county of | Mer- |
| chant. | | |
| " 2. John Smith of | in the county of | |
| " 3. Thomas Green of | in the county of | |
| " 4. John Thompson of | in the county of | |
| " 5. Caleb White of | in the county of | |
| " 6. Andrew Brown of | in the county of | |
| " 7. Cæsar White of | in the county of | |

Dated the 22d day of November 1861.

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of 500,000*l.*, divided into 5000 shares of 100*l.* each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The Directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the Company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	No. of Shares taken by each Subscriber.
" 1. John Jones of in the county of .	200
" 2. John Smith of in the county of .	25
" 3. Thomas Green of in the county of .	30
" 4. John Thompson of in the county of .	40
" 5. Caleb White of in the county of .	15
" 6. Andrew Brown of in the county of .	5
" 7. Cæsar White of in the county of .	10
Total shares taken . .	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an Unlimited Company, having a capital divided into Shares.

Memorandum of Association.

1st. the name of the Company is "The Patent Stereotype Company."

2d. The registered office of the Company will be situate in England.

3d. The objects for which the Company is established are "the working of a Patent Method of Founding and Casting Stereotype Plates, of which method John Smith, of London is the sole patentee."

W_e, the several persons whose names are subscribed, are desirous of being formed into a Company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

-
- | | | |
|-----------------------|------------------|-----------|
| " 1. John Jones of | in the county of | Merchant. |
| " 2. John Smith of | in the county of | |
| " 3. Thomas Green of | in the county of | |
| " 4. John Thompson of | in the county of | |
| " 5. Caleb White of | in the county of | |
| " 6. Andrew Brown of | in the county of | |
| " 7. Abel Brown of | in the county of | |

Dated 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

*Articles of Association to accompany the preceding Memorandum of Association.***Capital of the Company.**

The capital of the Company is 2000*l.*, divided into twenty shares of 100*l.* each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the Company.

W_e, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			No. of Shares taken by Subscri- bers.
"1. John Jones of	in the county of	Merchant.	1
"2. John Smith of	in the county of	.	5
"3. Thomas Green of	in the county of	.	2
"4. John Thompson of	in the county of	.	2
"5. Caleb White of	in the county of	.	3
"6. Andrew Brown of	in the county of	.	4
"7. Abel Brown of	in the county of	.	1
Total shares taken			18

Dated the 22d day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

FORM F.

LICENCE to hold LANDS.

The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations hereby licence the Association, Limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*].

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3. c. 46. - (Parliament of Ireland.)	An Act to promote trade and manufactures by regulating and encouraging partnerships.
7 & 8 Vict. c. 110. -	An Act for the registration, incorporation, and regulation of Joint Stock Companies.
7 & 8 Vict. c. 111. -	An Act for facilitating the winding up the affairs of Joint Stock Companies unable to meet their pecuniary engagements.
7 & 8 Vict. c. 113. -	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98. -	An Act for facilitating the winding up the affairs of Joint Stock Companies in Ireland unable to meet their pecuniary engagements.
9 & 10 Vict. c. 28. -	An Act to facilitate the dissolution of certain Railway Companies.
9 & 10 Vict. c. 75. -	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78. -	An Act to amend an Act for the registra-

THIRD SCHEDULE—(*continued*).

Date and Chapter of Act.	Title of Act.
	tion, incorporation, and regulation of Joint Stock Companies.
11 & 12 Vict. c. 45.	- An Act to amend the Acts for facilitating the winding up the affairs of Joint Stock Companies unable to meet their pecuniary engagements, and also to facilitate the dissolution and winding up of Joint Stock Companies and other partnerships.
12 & 13 Vict. c. 108.	- An Act to amend the Joint Stock Companies Winding up Act, 1848.
19 & 20 Vict. c. 47.	- An Act for the incorporation and regulation of Joint Stock Companies and other associations.
20 & 21 Vict. c. 14.	- An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49.	- An Act to amend the law relating to Banking Companies.
20 & 21 Vict. c. 78.	- An Act to amend the Act 7th & 8th Vict. c. 111, for facilitating the winding up the affairs of Joint Stock Companies unable to meet their pecuniary engagements, and also the Joint Stock Companies Winding up Acts, 1848 and 1849.
20 & 21 Vict. c. 80.	- An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60.	- An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91.	- An Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability.

SECOND PART.

7 & 8 Vict. c. 113. s. 47.

Every Company of more than six persons established on the 6th day of May, 1844, for the purpose of carrying on the trade or business of bankers within the distance of 65 miles from London, and not within the provisions of the Act passed in the session holden in the 7th and 8th years of the reign of her present Majesty, chapter 113, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such Companies carrying on the said trade or business at any place in England exceeding the distance of 65 miles from London, under the provisions of an Act passed in the 7th year of the reign of King George the Fourth, Chapter 46, intituled "An Act for the better regulating copartnerships of certain bankers in England, and for amending so much of an Act of the 39th and 40th years of the reign of his late Majesty King George the Third, intituled 'An Act for establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year 1800,' as relates to the same," provided that such first mentioned Company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last mentioned Act, and all the provisions of the last recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first mentioned Companies as if they had been originally included in the provisions of the last recited Act.

Existing
Companies
to have the
powers of
suing and
being sued.

20 & 21 Vict. c. 49, Part of Section XII.

Notwithstanding anything contained in any Act passed in the session holden in the 7th and 8th years of the reign of her present Majesty, Chapter 113, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not

Power to
form bank-
ing partner-
ships of ten
persons.

exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any Company of not more than six persons could before the passing of this Act have carried on such business.

GENERAL ORDER AND RULES OF THE HIGH COURT OF CHANCERY

TO REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1862.

[11th November, 1862.]

(With the exception of Rules 52, 57, 69, 73, 74, 75, 76 and 77, these Rules are embodied in the text of this work, and will be found at the pages set opposite the number of each Rule).

Rule 1.	Petition to wind up	.	.	.	Page 21
2.	ditto	.	.	.	22
3.	ditto	.	.	.	23
4.	ditto	.	.	.	24
5.	ditto	.	.	.	26
6.	Order to wind up	.	.	.	37
7.	ditto	.	.	.	44
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9.	ditto	.	.	.	62
10.	ditto	.	.	.	62
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12.	ditto	.	.	.	62
13.	ditto	.	.	.	62
14.	ditto	.	.	.	62
15.	ditto (provisional official liquidator)	.	.	.	57
16.	ditto	.	.	.	62
17.	ditto	.	.	.	63
18.	ditto	.	.	.	63
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22.	ditto	.	.	.	117
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24.	ditto	.	.	.	118

Rule 25.	Proof of debts	.	.	.	Page 118
26.	ditto	.	.	.	118
27.	ditto	.	.	.	119
28.	ditto	.	.	.	119
29.	List of contributories	.	.	.	86
30.	ditto	.	.	.	86
31.	ditto	.	.	.	87
32.	Sale of property	.	.	.	152
33.	Calls	.	.	.	106
34.	Ditto	.	.	.	107
35.	Ditto	.	.	.	107
36.	Payment in of money and deposit of securities	.	.	.	63
37.	ditto	.	.	.	64
38.	ditto	.	.	.	64, 107
39.	ditto	.	.	.	64, 108
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41.	ditto	.	.	.	65
42.	Delivery out of securities and payment out of and investment of monies	.	.	.	65
43.	ditto	.	.	.	65
44.	ditto	.	.	.	65
45.	Meetings of creditors or contributories	.	.	.	38
46.	ditto	.	.	.	38
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48.	Directions or sanction of Judge	.	.	.	66
49.	ditto	.	.	.	162
50.	ditto	.	.	.	66, 162
51.	Applications to the Court or Judge under sects. 137, 138, 144, 167 and 168	.	.	.	191, 214
52.	All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the Registrar, and shall be entered in the same manner, and in the same office as other orders made in chambers.				
53.	Advertisements	.	.	.	171
54.	Admission of documents	.	.	.	136
55.	Affidavits	.	.	.	137
56.	Certificate of chief clerk on liquidator's account	.	.	.	66
57.	A register shall be kept of all proceedings in the Judge's chambers, in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders, and no documents or proceedings are to be filed in the Judge's chambers unless the Judge shall otherwise direct.				

Rule 58. File of proceedings	. . .	56, 72, 136
59. Provisional official liquidators	. . .	57
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61. ditto	. . .	47
62. ditto	. . .	47
63. Service of summons, notices, &c.	. . .	87, 172
64. ditto	. . .	87, 172
65. Termination of winding up	. . .	183
66. ditto	. . .	183
67. ditto	. . .	183
68. Duties of solicitor to official liquidator	. . .	79
69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.		
70. Fees	. . .	175
71. Ditto	. . .	175
72. Taxation of costs	. . .	175

73. The power of the Court and of the Judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

74. The general practice of the Court, including the course of proceeding and practice at the Judge's chambers, as provided by the stat. 15 & 16 Vict. c. 80, and the General Orders of the Court relative thereto, shall in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable and not inconsistent with the said Act, or these rules, apply to all proceedings for winding up a company.

75. These rules apply only to proceedings under the Companies Act, 1862.

Commencement of Rules.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

Interpretation.

77. The first rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order,

and such rules shall have the effect of, and be deemed to be general orders of the Court.

25 & 26 VICT. c. 87.

An Act to consolidate and amend the Laws relating to Industrial and Provident Societies.

[7th August, 1862.]

WHEREAS by the Industrial and Provident Societies Act, 15 & 16 Vict. 1852, it is enacted, that it shall be lawful for any number of ^{c. 81.} persons to establish a society under the provisions thereof and of the therein recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorized by the laws in force with respect to friendly societies or by the said recited Act, by carrying on or exercising in common any labour, trade, or handicraft, or several labours, trades, or handicrafts, except the working of mines, minerals, or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; and that the said Act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions hereof: And whereas by an Act passed in the 17th and 18th ^{17 & 18 Vict. c. 25.} years of her present Majesty, cap. 25, various provisions were made for the better enabling legal proceedings to be carried on in any matter concerning the societies formed under the said Act of 1852: And whereas the last mentioned Act was amended by an Act passed in the first session of the 19th and 20th years of her present Majesty, ^{19 & 20 Vict. c. 40.} cap. 40: And whereas various societies have been formed and are now carrying on business under the provisions of the said recited Acts, and it is desirable to consolidate and amend the laws relating to such societies: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Industrial and Provident Societies Act, 1852, and the said recited Acts for the amendment thereof, are hereby ^{Recited Acts repealed.} repealed from the passing of this Act.

As to So-
cieties regis-
tered under
recited Acts.

2. All societies registered under the Industrial and Provident Societies Act, 1852, shall be entitled to obtain a certificate of registration on application to the Registrar of Friendly Societies, and for which certificate no fee shall be payable to the registrar.

Constitution
of Societies
under this
Act.

3. Any number of persons, not being less than seven, may establish a society under this Act for the purpose of carrying on any labour, trade, or handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts, or otherwise permitted by law.

Rules.

4. The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this Act.

Registration
of Society.

5. Two copies of the rules shall be forwarded to the Registrar of Friendly Societies of England, Scotland, or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by the Friendly Societies Act, 1855; and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability.

Certificate of
registration
to vest all
property in
Society now
held in trust
for Society.

6. The certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society; and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement.

Copy of rules
to be deli-
vered to per-
sons, on de-
mand.

7. A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding 1s.

No Society to
be registered
by same
name as that
of any exist-
ing Society.

8. No society shall be registered under a name identical with that by which any other existing society has been registered, or so nearly resembling such name as to be likely to deceive the members or the public, and the word limited shall be the last word in the name of every society registered under this Act.

Member's
interests

9. No member shall be entitled, in any society registered

under this Act, to hold or claim any interest exceeding the sum of 200*l*. limited to 200*l*.

10. Every society registered under this Act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such society, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the society. Publication of name by a Society.

11. If any society under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding 5*l*. for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such society or any person on its behalf uses any seal purporting to be a seal of the society whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such society, or signs or authorizes to be signed on behalf of such society any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of 50*l*., and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the society. Penalties on non-publication of name, &c.

12. Every society under this Act shall have a registered office to which all communications and notices may be addressed: If any society registered under this Act carries on business without having such an office, it shall incur a penalty not exceeding 5*l*. for every day during which business is so carried on. Every Society to have a registered office. Penalty on default.

13. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him. Until such notice is given the society shall not be deemed to have complied with the provisions of this Act. Notice of situation of registered office.

Signature
and effect of
rules.

14. The rules of every society registered under this Act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to such rules subject to the provisions of this Act; and all monies payable by any member to the society in pursuance of such rules shall be deemed to be a debt due from such member to the society.

Application
of Friendly
Societies
Acts to this
Act.

15. The provisions of the "Friendly Societies Acts" shall apply to societies registered under this Act in the following particulars :—

Exemption from stamp duties and income-tax :

Settlements of disputes by arbitration or justices :

Compensation to members unjustly excluded :

Power of justices or county courts in case of fraud :

Jurisdiction of the registrar.

Power to
member to
nominate
persons into
whose name
his interest
may be
transferred
at his death.

16. The provisions of the "Friendly Societies Act, 1854," whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this Act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be transferred: Provided nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any persons so nominated the full value of such interest.

As to the
winding up
of Societies.

17. Any society registered under this Act may be wound up either by the Court or voluntarily, in the same manner and under the same circumstances under and in which any Company may be wound up under any Acts or Act for the time being in force for winding up Companies; and all the provisions of such Acts or Act with respect to winding up shall apply to such society, with this exception, that the Court having jurisdiction in the winding up shall be the County Court of the district in which the office of the society is situated.

Dissolution
of Society
not to pre-
vent wind-
ing up of its
affairs.

18. In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this Act, so long and so far as any matters relating to the same remain unsettled, to the intent that such society may do all things necessary to the winding up of the concerns thereof, and

that it may be sued and sue, under the provisions of this Act, in respect of all matters relating to such society.

19. The provisions of the Joint Stock Companies Acts as to bills of exchange and the admissibility of the register of shares in evidence shall apply to all societies registered under this Act.

Provisions of Joint Stock Companies Acts to apply.

20. In the event of a society registered under this Act being wound up every present and past member of such society shall be liable to contribute to the assets of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

Liability of present and past members of Society.

(1). No past member shall be liable to contribute to the assets of the society if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:

(2). No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceased to be a member:

(3). No past member shall be liable to contribute to the assets of the society unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in order to satisfy all just demands upon such society:

(4). No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a past or present member.

21. Any society registered under this Act may be constituted a Company under the Companies Acts, by conforming to the provisions set forth in such Act, and thereupon shall cease to retain its registration under this Act.

Society may be constituted under Companies Acts.

22. Every person or member having an interest in the funds of any society registered under this Act may inspect the books and the names of the members at all reasonable hours at the office of the society.

Members may inspect book

23. The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the Judge of the County Court in any matter arising under this Act.

Sheriff's jurisdiction in Scotland.

24. A general statement of the funds and effects of any

Annual re-

turns to be prepared as registrar may direct.

society registered under this Act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall comprise such particulars as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this Act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same.

Recovery of penalties.

25. All penalties imposed by this Act, or by the rules of any society registered under this Act, may be recovered in a summary manner before two justices, as directed by an Act passed in the 11th & 12th years of the reign of her present Majesty Queen Victoria, c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders."

Short title.

26. This Act may be cited as "The Industrial and Provident Societies Act, 1862."

SCHEDULE of Matters to be provided for in the Rules.

1. Object and name, and place of office of the society, which must in all cases be registered as one of limited liability.
2. Terms of admission of members.
3. Mode of holding meetings and right of voting, and of making or altering rules.
4. Determination whether the shares shall be transferable, and in case it be determined that the shares shall be transferable, provision for the form of transfer and registration of shares and for the consent of the committee of management and confirmation by the general meeting of the society; and in case shares shall not be transferable, provision for paying to members balance due to them on withdrawing from the society.
5. Provision for the audit of accounts.
6. Power to invest part of capital in another society; pro-

vided that no such investment be made in any other society not registered under this Act, or the "Joint Stock Companies Act," as a society or Company with limited liability.

7. Power and mode of withdrawing from the society, and provisions for the claims of executors, administrators, or assigns of members.
8. Mode of application of profits.
9. Appointment of managers and other officers, and their respective powers and remuneration.

22 & 23 VICT. c. 59.

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.

[13th August, 1859.]

FOR the better providing for the settlement by arbitration of matters in which railway Companies in the United Kingdom are mutually interested, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say),

1. This Act may for all purposes be cited as "Railway Companies Arbitration Act, 1859;" and the expression "Railway Companies" in this Act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used.

2. Any two or more railway Companies, whether already or hereafter incorporated (in this Act called "the Companies"), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this Act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the Companies which the directors of the

Power for railway Companies to refer matters to arbitration.

Companies respectively might lawfully delegate to any committees of themselves respectively.

Power to alter or revoke agreements for reference.

3. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions, or stipulations thereof.

Agreements to be carried into effect.

4. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to a single arbitrator.

5. Where the Companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

6. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Where there are two Companies the reference shall be made to two arbitrators:

Where there are three or more Companies the reference shall be made to so many arbitrators as there are Companies.

Appointment of arbitrators by Companies.

7. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appointment of arbitrators by Board of Trade.

8. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Board of Trade, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrators by Companies to supply vacancies.

9. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Board of Trade to supply vacancies.

10. Where the Company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in

writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Board of Trade may appoint an arbitrator; and the arbitrator so appointed by the Board of Trade shall for the purposes of this Act be deemed to be appointed by the Company so failing.

11. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other Company, or every other Company, in writing under their common seal.

Appointment
of arbitrator
not revo-
cable

12. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment
of umpire
by arbitra-
tors.

13. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment
of umpire by
Board of
Trade.

14. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment
of umpire by
arbitrators
to supply
vacancy.

15. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the Companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Appointment
of umpire
by Board of
Trade to
supply va-
cancy.

16. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding
arbitrators
and umpires
to have
powers of
predecessors.

17. Where there are two or more arbitrators, if they do not, within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Reference to
umpire.

Power for arbitrators, &c., to call for books, &c., and administer oath.

18. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents of evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the Lord Ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Procedure in the arbitration.

19. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of Companies.

20. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

Several awards may be made.

21. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in due time to bind all parties.

22. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the Companies.

Power for

23. Provided always, that (except where and as the

Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

umpire to extend period for making his award.

24. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards not to be set aside for informality.

25. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

Awards to be obeyed.

26. Full effect shall be given by all the superior Courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the Companies respectively and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by distress infinite on the property of the Companies respectively, or by any other process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame for the purpose.

Agreements, arbitrations and awards to have effect.

27. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively.

Costs of arbitration and award.

28. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Payment of costs.

29. The submission to any arbitration in accordance with this Act may at any time be made a rule of any of Her Majesty's superior Courts of record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the Court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the Court think fit.

Submission to arbitration to be made a rule of Court.

8 VICT. c. 16.

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of Companies incorporated for carrying on Undertakings of a Public Nature.
[8th May, 1845.]

And with respect to the settlement of disputes by arbitration, be it enacted as follows :

Appointment
of arbitrator
when ques-
tions are to
be deter-
mined by
arbitration.

128. When any dispute authorized or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred ; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation ; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute ; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of
arbitrator to
be supplied.

129. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place ; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte* ; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment
of umpire.

130. Where more than one arbitrator shall have been

appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

131. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway Company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators, in case of railway Companies.

132. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power of arbitrators to call for books, &c.

133. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators or their umpires, as the case may be.

Costs to be in the discretion of the arbitrators.

134. The submission to any such arbitration may be made a rule of any of the superior Courts, on the application of either of the parties.

Submission to arbitration to be made rule of Court.

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